(23,340)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 334.

NANCY NERÓN LONGPRÉ, GUSTAVO MOURRAILLE, ET AL., PLAINTIFFS IN ERROR,

vs.

CLEMENTE DIAZ Y QUIÑONES,

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 10, 1914.

1 (Filed April 4, 1911.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

Law. No. —.

CLEMENTE DIAZ Y QUIÑONEZ, Plaintiff,
vs.
NANCY NEGRÓN LONGPRÉ, GUSTAVO MOURRAILLE, EMILIA MOURraille, Love Mourraille, Matilde Mourraille, and Victor Mourraille, Defendants.

Ejectment and Mesne Profits.

Reformed Complaint on Removal.

Now comes Clemente Diaz y Quiñonez by his attorneys, Damian Monserrat, Jr., and Joseph Anderson, Jr., and complains of the above named defendants, Nancy Negrón Longpré, Gustavo Mourraille, Emilia Mourraille, Love Mourraille, Matilde Mourraille and Victor Mourraille and for cause of complaint says:

I.

That the Plaintiff is a citizen of Porto Rico, a resident of San Juan, Porto Rico in the District of Porto Rico, emancipated and with legal capacity to bring this action.

II.

That the defendants are citizens of the Republic of France and residents of the Island of Vieques, Porto Rico; Nancy Negron
2 Longpre and Emilia, Love and Victor Mourraille being temporarily absent from Porto Rico.

III.

That the Plaintiff, Clemente Diaz y Quiñonez is the owner in full dominio of the following described property situated on the Island of Viequez:

"A piece and parcel of land situated in the Barrios Florida and Puerto Ferre within the Municipal District of Viequez, with an area of 131 cuerdas and 50/100ths of another equivalent to 57 hectares, 5 areas and 83 centiareas, bounded on the North with the estate known as "Santa Maria" property of Carlos Lebrun; on the South by the lands of Ildefonso Leguillon and of Eufrasio Colon; on the East by the farm formerly of Mourraille y Martineau; and on the West by property of Santos Diaz".

IV.

That the plaintiff acquired this property by inheritance from his father, Clemente Diaz y Gonzalez, who died intestate on the Island of Viequez on the 30th day of April, 1890, leaving the plaintiff as his only son and only heir, as he was declared to be by the Court of first instance of Humacao on the 5th day of August, 1892.

V.

That the said Clemente Diaz y Gonzalez, father of the plaintiff, acquired the said property as part of his separate estate by
3 purchase of the joint interest of his brother in a portion of a larger estate.

VI.

That on or about the 1st day of February, 1894, the plaintiff being seized and possessed of the above described property, the firm of V. Mourraille y Martineau, a partnership then existing and doing business in the Island of Viequez, and the predecessors of the defendants, without any right, title or interest entered upon the above described property and forcibly ousted the plaintiff, then a young boy of tender years, to wit, of the age of three years, one month and twenty days from the possession of the property.

VII.

That thereafter said firm of V. Mourraille y Martineau, being wrongfully in possession of the said property was dissolved and the property was delivered to the senior partner of said firm, one Victor Mourraille, father of the defendants.

VIII.

That the only right, title and interest that the said firm V. Mourraille y Martineau had was the void and pretended title which they secured from the mother of the plaintiff Doña Petra Quiñonez y Rodriguez, who illegally, unjustly and contrary to law and without any alterization on account of necessities and needs, pretended to sell and transfer said property in payment of a small and insignificant debt, which the conjugal partnership, composed of herself and Clemente Diaz y Gonzalez, her husband owed to the said firm.

4 IX.

That thereafter as aforesaid, the said firm was dissolved and the said Victor Mourraille took possession of the said property with only such rights and interest as the said partnership had theretofore had.

X.

That upon the death of the said Victor Mourraille, the defendants herein, widow and children respectively of the said Victor Mour-

raille, took possession of the said property with only such right, title and interest as the father had acquired from the above named partnership.

X-.

That the said property is well worth the sum of Twenty Thousand ($20,000) Dollars.

XII.

That the rents and profits of the said property from the time the defendants, through their predecessors, unlawfully took possession of same and ousted the plaintiff therefrom have amounted to the sum of Forty Five Thousand ($45,000) Dollars.

Wherefore, the plaintiff asks the Court for a judgment, giving him the possession of the above described property and Forty-five thousand ($45,000) Dollars for damages and for the rents and profits accrued since the unlawful occupation by the predecessors of the defendants of the property and for the costs and expenses of this action.

(Signed) DAMIAN MONSERRAT, JR.,
" JOSEPH ANDERSON, JR.,
Attorneys for Plaintiff.

5 UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Clemente Diáz y Quiñonez being duly sworn says that he is the Plaintiff herein; that he has read and had translated to him the foregoing compiaint and that the facts therein contained are true, except those alleged on information and belief and as to those he believes it to be true.

(Signed) C. DIAZ, *Plaintiff.*

Subscribed and sworn to before me this 1st day of April 1911, by Clemente Diaz y Quiñonez, of age, a resident of San Juan, Porto Rico, to me personally known.

(Signed) DAMIAN MONSERRAT,
Notary Public.

Affidavit No. —.

[Seal of Notary.]

NOTARIA DE MONSERRAT,
Affidavit No. 702.

Due service of the within complaint, by copy is hereby admitted this 1st day of April, 1911.

(Signed) HENRY F. HORD,
Attorneys for Defendants.

6 (Filed Sept. 9, 1911.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

At Law. No. 794.

CLEMENTE DIAZ Y QUIÑONEZ, Plaintiff,
vs.
NANCY NEGRON LONGPRE et al., Defendants.

Amended Demurrer to the Reformed Complaint.

Come all of the defendants herein by their attorneys Hord and Scoville and demurring to the complaint herein say that the same is ambiguous unintelligible and uncertain in that the same does not set out the age of the plaintiff herein, and of this they pray judgment of the Court.

San Juan, P. R., September 9th, 1911.

(Signed) HORD & SCOVILLE,
Attorneys for Defendants.

7 (Filed October 24, 1911.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

At Law. No. —.

CLEMENTE DIAZ Y QUIÑONEZ, Plaintiff,
vs.
NANCY NEGRON LONGPRE et al., Defendants.

Answer.

Now come the defendants herein by their attorney H. H. Scoville and answering the complaint of the Plaintiff say:

I.

That the defendants have no information as to the facts set out in paragraph I of the complaint and therefor- deny the same.

II.

Defendants admit the allegations contained in paragraph II of the complaint.

III.

Defendants deny the allegations contained in paragraph III of the complaint.

8

IV.

Defendants deny all of paragraph IV of the complaint except the allegation that Clemente Diaz y Gonzalez died intestate in the Island of Viequez on the 30th of April, 1890, and that the Plaintiff was his only son.

V.

The defendants have no information as to the allegations contained in paragraph V of the complaint and therefore deny the same.

VI.

Defendants deny the allegations contained in paragraph VI of the complaint except the allegation to the effect that the firm of Mourraille and Martineau took possession of the property described in paragraph III of the complaint in the month of February, 1894.

VII.

The defendants admit that the firm of Mourraille and Martineau was dissolved and that the property was delivered to the senior partner of the said firm Victor Mourraille, the father of the defendants, but deny that said possession was wrongful.

VIII.

Defendants deny the allegations contained in paragraph VIII of the complaint.

IX.

Defendants deny allegations contained in paragraph IX of the complaint except insofar as the same alleges that Victor
9 Mourraille took possession of said property and acquired the rights and interests of the partnership of Mourraille and Martineau.

X.

Defendants admit the allegations contained in paragraph X of the complaint.

XI.

The defendants deny the allegations contained in paragraph XI of the complaint.

XII.

The defendants deny the allegations contained in paragraph XII of the complaint insofar as the same alleges that the rents and profits of said property since the defendants and their predecessors took possession of the same have amounted to the sum of $16,030 or that said defendants or their predecessors unlawfully took possession or have unlawfully withheld possession of said property from plaintiff.

XIII.

Further answering said complaint defendants allege the facts to be that at the time of the death of Don Clemente Diaz y Gonzalez, father of plaintiff, he was indebted to the firm of Mourraille and Martineau for certain sums of money; that he was also indebted to Mr. Ramón Aboy Benitez in a large sum of money and that said Ramon Aboy Benitez later ceded and transferred his account to the firm of Mourraille and Martineau.

10 That on the 26th day of November, 1892, the Judge of the Court of first Instance of Humacao, named and appointed Santos Diaz y Gonzalez, an uncle of plaintiff, as guardian at litem for the plaintiff, especially authorizing said guardian to look after the interests of plaintiff in regard to the valuation, division and adjudication of the property left by his father; that acting under said appointment, on the 24th day of June, 1893, said guardian and Doña Petra Quiñonez, the mother of plaintiff, named Augusto Neri Delerme as "Contador Partidor" to make a settlement and division of said estate; that said "Contador Partidor" made a settlement and division of said estate whereby the property described in plaintiff's complaint was adjudicated and transferred to the firm of Mourraille and Martineau in payment of the indebtedness of the estate to the firm of Mourraille and Martineau, including the account which had been ceded to said firm by Ramón Aboy Benitez.

That said settlement, division and adjudication was approved by Doña Petra Quiñonez in her own behalf and by Santos Diaz as guardian of plaintiff.

That said settlement, division and adjudication was approved on the 27th day of December, 1893, by the Judge of the Court of First Instance of Humacao, said Court having full jurisdiction in the premises.

XIV.

Defendants allege that their predecessors in interest V. Mourraille and Martineau and Victor Mourraille, acquired said *said*

11 property in good faith and with proper title in the year 1893 and have remained in the undisputed, quiet and peaceful possession of the same from said time until the filing of this complaint and they are informed and believe that the plaintiff and his guardian were and have been residents of Porto Rico during all said time and that under section 1957 of the Civil Code of Porto Rico then in force, the defendants have acquired perfect title by prescription.

That the defendants having acquired said property in good faith and with proper title before the 4th day of April, 1899, their title thereto has become perfected and any right which the plaintiff might have had therein terminated by operation of the Military Order approved April 4th, 1899, amending article 1957 of the Civil Code then in force.

That the action of ejectment is not the proper remedy of the plaintiff because it appears from the face of the complaint that the defendants have a written title to said property and said complaint

does not pray for the annulment of said title nor does it appear from said complaint that any Court of proper jurisdiction ever declared the rescission or the nullity of said document or deed in accordance with sections 1258, 1267 and 1268 of the Civil Code now in force and of sections 1291, 1299, 1300, 1301 and 1076 of the Civil Code in force at the time said contract was executed.

Defendants further allege that the ti-le*d* of their predecessors in interest to said property was authorized in the proceedings for the division, partition and adjudication of the inheritance of the plaintiff and that if the rights of the plaintiff should have been
12 affected by said division, partition and adjudication, his right of action to ask for the re-cission of said division and transfer has prescribed under article 1076 of the Civil Code in force on the date of said transfer.

Wherefore defendants pray for a judgment in their favor and costs and for attorneys' fees.

(Signed) H. H. SCOVILLE,
Attorney for Defendants.

San Juan, P. R., October 23rd, 1911.

I, H. H. Scoville being duly sworn depose and say: that I am of legal age, attorney for the defendants in the above entitled cause; that I have read the foregoing answer; that the matters set out and alleged therein are true to the best of my knowledge and belief; that I make this affidavit because none of the defendants are at present within the Island of Porto Rico.

(Signed) H. H. SCOVILLE.

Subscribed and sworn to before me at San Juan, P. R., this 24th day of October, 1911, by H. H. Scoville, of legal age, married, attorney at law, and personally known to me.

[SEAL.] (Signed) RAFAEL GUILLERMETY,
Clerk Dist. Court of U. S. for P. R.,
By N. V. COLBURN, *Deputy.*

13 In the District Court of the United Sttaes for Porto Rico.

(Filed November 7, 1911.)

Law. No. 794.

CLEMENTE DIAZ Y QUIÑONEZ, Plaintiff,
vs.
NANCY NEGRÓN LONGPRÉ et al., Defendants.

Reinvindicatory Action.

Demurrer to the Answer.

Now comes the plaintiff, by his attorneys, Joseph Anderson, Jr., and Damian Monserrat, Jr., and present their demurrer to the answer heretofore filed, and for cause of demurrer thereto say:

(1) That the answer does not state facts sufficient to constitute a defense.

(2) That the answer is ambiguous, unintelligible and uncertain in that the simple denials contained in paragraphs III, IV, VI, VII, IX, XI, XII, are not such denials as are required by sections 110 and 118 ff. of the Code of Civil Procedure and especially because the denials contained in paragraphs VI, VII, IX, and XII, are mere conclusions of law.

(*b*) That the alleged defense set forth in the second part of Paragraph XIV is ambiguous in that it is impossible to ascertain therefrom what prescription of rights is intended, and *and*
14 because the same is not and could not be a defense to this action.

Wherefore the plaintiff claims judgment with costs.

(Signed) JOSEPH ANDERSON, JR.,
(Signed) DAMIAN MONSERRAT, JR.,
For Plaintiffs.

San Juan, Nov. 4th, 1911.

(Seventh.)

Received copy of the foregoing this 7th day of November, 1911, and the filing of same on this day is accepted and in accordance with stipulation heretofore entered into by the attorneys for the parties.

(Signed) H. H. SCOVILLE &
H. P. LEAKE.

15 In the District Court of the United States for Porto Rico.

(Filed November 28, 1911.)

At Law. No. —.

CLEMENTE DIAZ Y QUIÑONEZ, Plaintiff,
versus
NANCY NEGRON-LONGPRE, GUSTAVO MOURRAILLE, EMILIA MOURraille, Love Mourraille, Matilde Mourraille, Victor Mourraille, Defendants.

Ejectment and Mesne Profits.

Amended Answers.

Now comes the defendants, by their attorneys, and by leave of the Court first had, present their amended answers herein, and answering say:

I.

The defendants have no information as to the facts set out in paragraph I of the complaint, and therefore they deny the allegations contained therein.

II.

Defendants admit the allegations contained in paragraph II of the complaint.

III.

Defendants deny all allegations contained in paragraph III of the complaint.

IV.

Defendants deny the allegations in paragraph IV of the complaint, except the allegation that Clemente Diaz y Gonzalez died intestate in the island of Vieques on the 30th of April, 1890, and that the plaintiff is his only son.

16 V.

Defendants have no informations as to the allegations contained in paragraph V of the complaint, and therefore they deny the same.

VI.

Defendants deny the allegations contained in paragraph VI of the complaint, except that the firm of Mourraille & Martineau took possession of the property described in paragraph III of the complaint in the month of February, 1894.

VII.

Defendants admit that the firm of Mourraille & Martineau was dissolved, and that said property was delivered to the senior partner of said firm, Victor Mourraille, the predecessor in title of these defendants, but deny that the possession of said property by the firm of Mourraille & Martineau or by Victor Mourraille, was wrongful.

VIII.

Defendants deny the allegations contained in paragraph VIII of the complaint.

IX.

Defendants deny the allegations in paragraph IX of the complaint except in so far as the same alleges that Victor Mourraille took possession of said property and acquired the rights and interests of the partnership of Mourraille & Martineau.

X.

Defendant- admit the allegations of paragraph X of the complaint.

XI.

Defendants deny the allegations of paragraph XI of the complaint.

17 XII.

Defendants deny the allegations of paragraph XII of the complaint.

Wherefore defendants pray for a judgment in their favor, with costs and expenses of this action.

And for a further answer and first affirmative defense, the defendants say that it appears from the face of the complaint that the action sought to be exercised by the plaintiff is one for the recovery of the possession of real property held by defendants under a title the source of which is the same as the source of title claimed by plaintiff, and that the action of ejectment and mesne profits does not lie in such a case in this district. And further as it appears from the complaint that the defenda-ts have a written title to said property and as said complaint does not pray for the annul*l*ment of said title nor does it appear from it that any Court of proper jurisdiction ever declared the nullity of said title the action of ejectment does not lie. And for a further answer and second affirmative defense defendants say that the facts as to the acquirement by their predecessor in title of the title and possession of the land described in the complaint are as follows: That on the 30th of April 1890 Don Clemente Diaz y Gonzalez died, intestate, in the island of Vieques, and that at the time of his death he was the owner of the land described in the complaint; that thereafter and on the 5th of August 1892, the Court of First Instance of Humacao, which court had jurisdiction in the matter, in a proceeding of voluntary jurisdiction in a declaration of heirship, and at the petition of the mother of plaintiff declared him to be the sole heir *or* his father Don
18 Clemente Diaz, who had died intestate, and that at the time of such declaration plaintiff was a minor infant; that on the 30th of September 1892 said Court named Santos Dias y Gonzalez, brother of the deceased and uncle of plaintiff as guardian ad litem of plaintiff in order that he might defend in litigation and in all things concerning the valuation, the inventory, the division and adjudication of the property of the estate of Don Clemente Diaz y Gonzalez, conferring upon said guardian ad litem full power to act for his ward in all matters in court and out of court, and especially in those matters in which the interests of the minor might be opposed to those of his mother. That thereafter, by common agreement, the interested parties, to wit: Doña Petra Quiñones y Rodriguez and Don Santos Diaz y Gonzalez, guardian ad litem for the minor heir Clemente Diaz y Quiñones, named as 'contador partidor' of said estate Don Augusto Nere Delerme, who, after having examined the order declaring Clemente Diaz y Quiñones the heir of his father, and the inventory formed on the 22nd of June 1893, the values placed upon the real estate by three experts named for the purpose, and after having verified as correct the list of debts and their amounts, proceeded on the 24th of June 1893 to make the account, liquidation and partition of the estate of Don Clemente Diaz y Gonzalez, from which liquidation it appeared that the estate of

Don Clemente Diaz y Gonzalez was worth 4730P and consisted entirely of real estate, the rural properties being valued at 4430P and the urban at 300P, and that the debts of said estate amounted to 2934.71P. Said debts were as follows: A total of 2934.61P. owing to Ramon Aboy composed of the following items: 1235.07P. which was owing to Aboy by the deceased, and which in a conciliatory act had in the Municipal Court of Humacao between the creditor and the widow on the 5th of April 1892, was recognized by the widow as a valid debt for which she offered to give a mortgage on certain land for its better security; 200PP on a promissary note made by Don Clemente Diaz on the 25th of July 1889 in favor of Mourraille & Martineau; a promissary note for 207.50 or half of 415.00PP, signed by Clemente Diaz on the 20th of August, 1889 in favor of Mourraille & Martineau. The two notes were endorsed by Mourraille & Martineau to Ramon Aboy. 66P which Ramon Aboy paid for medical assistance for Clemente Diaz; 236.18 for interests on all those sums, making a total of 2964.61P. Thereafter the widow, Doña Petra Quiñones y Rodriguez, and Don Santos Diaz y Gonzalez, the guardian ad litem of the minor heir recognized and ratified said debts in a public document made before a notary public. And thereafter Ramon Aboy ceded in favor of Mourraille & Martineau, by a public document made before a notary, the right to collect 2630P of these debts, and said firm became subrogated to the rights of Ramon Aboy therein. Thereafter the representatives of the succession, to wit: Doña Petra Quiñones, the widow and Don Santos Diaz, the guardian ad litem, consented to the transfer from Aboy to the firm and promised to pay the cessionees the amount of 2630. and to Aboy the balance, amounting to 304.61. The real estate then belonging to the estate of Don Clemente Diaz was assessed by three appraisers appointed for that purpose, and the representatives of the succession agreed to adjudicate to the creditors, and the creditors agreed to accept at the price fixed by the assessors, enough real estate to satisfy the debts, and there was adjudicated to Mourraille & Martineau by the three representatives of the succession 131½ cuerdas of land of the hacienda 'Destino' to pay the debt of 2630.00, the land being assessed at about 20P a cuerda, which, at that time was a just valuation.

Thereafter the three representatives of the succession to wit: Santos Diaz, the guardian ad litem, Doña Petra Quiñones the mother, and Augustin Nere Delerme, the contador partidor applied to the Court of First Instance of Humacao for approval of their acts, and the Court after fully reviewing everything done by them in valuation, liquidation and adjudication proceedings, approved the same in an Order made on the 27th of December 1894, and approved the sale or adjudication of the lands to the creditors in payment of the debts, and ordered that the same be inscribed in the registry, which inscription was made on the 11th of April 1894.

And for further answer and a third affirmative defense, these defendants say:

That the administration of the estate of Don Clemente Diaz y

Gonzalez having been proceeded with in due form of law by the three persons representing the estate, two of whom were the nearest relatives of the minor heir, and all the acts and doings of said persons in the valuation and partition of said estate, and the payment of the creditors, having been submitted to the Court of First Instance of Humacao for its approval and having been specifically approved by said Court, and as no allegation of fraud on the part of the mother, the guardian ad litem or the contador partidor or other persons interested has been alleged by the plaintiff herein, and as the Court of First Instance of Humacao had the exclusive jurisdiction in matters involving testamentary proceedings and the
21 administrations of estates of intestates—a jurisdiction which this Court does not possess—the whole matter is coram judice, and defendants pray that the complaint be forthwith dismissed at the costs of plaintiff.

And for further answer and a fourth affirmative defense these defendants say that the decree of the Court of First Instance of Humacao allowing and approving the adjudication to defendants' predecessors in title of land for the payment of a debt of a deceased intestate, is not open to collateral attack as to the necessity for such adjudication or the price at which it was made.

And for a further answer and a fifth affirmative defense defendants allege that their predecessors in title acquired said property in good faith and proper title in the year 1893, and have remained in the undisputed, quiet and peaceful possession of the same from said time until the filing of this complaint, and defendants allege upon information and belief that the plaintiff and his guardians were and have been residents of Porto Rico during all of said time, and that under Sec. 1957 of the Civil Code of Porto Rico in force at the time defendants' predecessors in title acquired said property and the Military Order of April 4, 1899, the defendants have acquired a perfect title by prescription.

And for a further answer and a sixth affirmative defense, these defendants allege that their title of their predecessors in interest to said property was authorized in the proceedings for the division, partition and adjudication of the inheritance of the plaintiff, and that if plaintiff had been wronged by said division, partition and adjudication his right of action to ask for the rescission of
22 said division and transfer has prescribed under the old civil code and under the present code. (Article 1076 Old Civil Code).

And for further answer and seventh affirmative defense, defendants say that they are advised and believe that there existed a necessity for the sale or adjudication of the land in question form the payment of the debt as said debt was contracted by the father of plaintiff in part for the cleaning and preparing his lands for crops and the gathering of the same, and in part by the mother of plaintiff after his father's death for the payment of taxes, and the purchase of food, medicine and clothing for herself and for plaintiff, and they allege that said adjudication was made at a fair and just price.

Wherefore, defendants pray for a judgment in their favor and for costs and expenses of this action.

(Signed) H. H. SCOVILLE &
H. P. LEAKE,
Attorneys for Defendants.

23 I, H. H. Scoville, being duly sworn, depose and say that I am one of the attorneys for the defendants in the above entitled cause; that I am of legal age; that I have read the for-going answer; that the matters set out and alleged therein are true to the best of my knowledge and belief; that I make this affidavit because practically all the matters alleged in said answer are based upon public records which I have read and I am, therefore, better able to make this affidavit than any of the defendants, and for the further reason that the only defendant at present on the Island of Porto Rico lives at Vieques and several days would be required to forward same to Vieques for the affidavit.

(Signed) H. H. SCOVILLE.

Subscribed and sworn to before me this 28th day of November.

(Signed) RAFAEL GUILLERMETY, *Clerk*,
By RICARDO NADAL, *Deputy Clerk*.

24 In the District Court of the United States for Porto Rico.

(Filed December 1, 1911.)

Law. No. 794.

CLEMENTE DIAZ Y QUIÑONEZ, Plaintiff,
vs.
NANCY NEGRON LONGPRE et al., Defendants.

Reinvindicatory Action.

Demurrer to Amended Answer.

Now comes the Plaintiff, by his attorneys Joseph Anderson, Jr. and Damian Monserrat, Jr. and present their demurrer to the amended answer heretofore filed, and for cause of demurrer says:

(1) That the answer does not state facts sufficient to constitute a defense.

(2) That the answer is ambiguous, unintelligible and uncertain in that the simple denials contained in paragraphs III, IV, VI, VII, VIII, IX, X, XI, and XII are not such denials as are required by sections 110 and 118*ff* of the Code of Civil Procedure, and especially because same call for conclusions of law.

(*b*) That the alleged defenses set forth in the fourth, fifth, sixth and seventh affirmative defense, is ambiguous in that it is impossible to determine therefrom in what manner the said prescrip-

tion and under what law said prescription has run, and because the same is not and could not be a defense to this action.

25 Wherefore the Plaintiff claims judgment and costs.

(Signed) DAMIAN MONSERRAT, JR.,
By and " JOSEPH ANDERSON, JR.,
Attorneys for Plaintiff.

San Juan, Porto Rico, December 1st, 1911.

Received copy of the foregoing this 1st day of December, 1911.
(Signed) H. H. SCOVILLE,
" H. P. LEAKE,
Attorneys for the Defendants.

26 *Deed of Assignment of Credit Executed by Don Ramon Aboy Benitez, Doña Petra Quiñones, Don Santos Diaz, and Don Victor Mourraille:*

Before the Notary Don Leandro Lara y Tome, Vieques, Porto Rico, on June 20th, 1893.

27 TRANSLATION OF EXHIBIT "A" FOR PLAINTIFF.

Number Twenty-eight.

Assignment of Credit.

Parties hereto:

Don Ramon Aboy Benitez.
Doña Petra Quiñones.
Don Santos Diaz.
Don Victor Mourraille.

Witnesses:

Don Ricardo Romero, and Don Eulogio Cruz y Velez.

In the town and Island of Viequez, on the 20th of June of 1893, before me, Don Leandro Lara Tóme, Notary of this locality district of Humacao, and of the Illustrious Territorial College of this province of San Juan, Puerto Rico, resident of this town, appear:

Of one part: Don Ramon Aboy Benitez, thirty years of age, married, property owner and neighbor of this town.

Of the other part: Doña Petra Quiñones Rodriguez, 26 years of age, widow, devoted to the labors peculiar to her sex, and

Don Santos Diaz y Gonzalez, 27 years of age, married, property owner.

And of the other part, Don Victor Mourraille y Bometerre of sixty four years of age, married, sugar planter, all residents of this town, as shown by their personal certificates (cedulas) of the sixth class that of the second and third party, and of the fourth

class that of the latter, stubs numbers 1,147,79 and one respectively; issued by the Administration of Rents and Customs, of this town within the present fiscal year.

The parties hereto, who are to me personally known, appear at this act, the first, in his own right, the second as widow in first nuptials of Don Clement Diaz y Gonzalez, the third as defender of the minor infant Clement Diaz y Quiñones, and the fourth and last as active partner and manager of the agricultural
28 and cattle raising partnership V. Mourraille & Martineau, as shown by the proper instruments duly attested to at the end of this original deed, to prove that their representation, and for the purpose of inserting them in any copies thereof which may be issued hereafter. And the parties hereto being in my judgment legally qualified to execute this deed of acknowledgement of debts and assignment of credit, they, to that effect, set forth:

1. Don Ramon Aboy Benitez, states: that the succession of Don Clemente Diaz y Gonzalez, owes him the sum of Two thousand Nine hundred and thirty four pesos and seventy one cents, as appears from the documents which he exhibits, and which literally read as follows:

"Don Manuel Nicolas Berrios y Rodriguez, definite Secretary of the Municipal Court of Vieques, hereby certifies: That in the book of conciliatory acts kept by the municipal court, there is one under number 7 which literally copied reads as follows:

In Isabel Segunda of Vieques, on the 15th day of the month of April 1892, sitting in open court the municipal judge Don David Alvarez y Rodriguez, and I, the secretary being present appeared, of one part Don Ramon Aboy Benitez of this vicinity, property owner and of legal age, as shown by his personal certificate of the current fiscal year, which he exhibited and I returned to him, accompanied by his attorney in fact Don Teodoro Vidal, and of the other, Doña Petra Quiñones, widow of Don Clement Diaz
29 also of this vicinity, and of legal age, which is likewise proven by her certificate of residence which she produced and I returned to her, accompanied by her representative Don Enrique Urrutia; and it being the day and the hour set for this act, the plaintiff Mr. Aboy stated: That he sues the succession of Don Clemente Diaz, that is, his widow, so that he be paid the sum of three thousand and seventy seven pesos thirty-two cents current money, which it is owed to him, as the result of an account acknowledged by the deceased Mr. Diaz, on the 23rd day of March 1890; which account amounted to Two thousand and twenty eight pesos ninety four cents, and for which amount he gave him a promis-ory note which fell due on the 31st day of December of last year ninety one; and of another account, which on the 31 of last March he presented to the lady widow present, for the sums and effects supplied for the funeral, payment of taxes and other private debts contracted by the late Mr. Diaz referred to, for cash and goods supplied to the said widow present. To which she replied: That she acknowledges the debts claimed from her, to wit: that of Two thousand twenty eight pesos and ninety four cents, created by her late hus-

band Don Clemente Diaz for which he executed a promissory note in favor of Mr. Aboy, due the 31 of December last year; and that of One thousand thirty eight pesos thirty eight cents, resulting from moneys and goods taken by her late husband, payment of taxes which he owed to the Municipality, and some private debts which he owed and were paid by the plaintiff; other amounts borrowed for the funeral and the wake of the said deceased; and still others for the support of deponent and her little child; stat-
30 ing, that at this moment she has no funds with which to pay the account which she lawfully owes, and she begs the plaintiff to grant her an extension of time up to March of next year 1893, when the lease of the farm Destino, with Messrs. V. Mourraille and Martineau will expire, until which date she will have no money available; calling the attention of Mr. Aboy, that in that account which he claims there were six hundred and thirty two pesos twenty nine cents current money which represented one half of the promissory note executed on March 15th, 1889, for the sum of eight hundred and forty four pesos five cents, by the husband of deponent in favor of Mr. Aboy, and that one half of that which the deceased executed to Don Jose C. Bajandas, under the same date, for four hundred and twenty pesos fifty three cents, belong to Don Santos Diaz, because if the husband of the relator subscribed said documents was due to the fact that the said Don Santos was a minor at that time, which fact is known to Don Agusto Nere Delerme, who was the representative of the said Don Santos Diaz in the settlement of accounts which was had with the plaintiff Mr. Aboy on March 15th, 1889; wherefore the relator requests that the said sum of six hundred and thirty two pesos twenty nine cents be eliminated from the amount claimed, it being more easy for Mr. Aboy to collect the same from the debtor Don Santos Diaz; and finally she also requests the Judge, that she be allowed one year of grace for payment, without interests. The plaintiff Mr. Aboy, answered that he was willing to eliminate from the account the six hundred and thirty two pesos twenty nine cents, so as to make the proper claim against Don Santos Diaz; to deduct to the debtor Mrs. Quiñones two hundred pesos, and to wait for the payment of the balance amounting to Two thousand two hundred and thirty five pesos three cents, until the 31st of March of next year, 1893, without in-
31 interests, but upon condition that he be granted a first mortgage upon one half of the farm Destino, belonging to the succession of the said Don Clemente Diaz; the defendant further replied that she accepts the offers made by Mr. Aboy, binding herself to execute the first mortgage upon that part of the farm Destino, in favor of the creditor Don Ramon Aboy Benitez, for the sum of Two thousand two hundred and thirty five pesos and three cents; setting forth that this amount includes the promissory note which the late husband of the relator executed to Mr. Aboy, to his order, on the 24th of March 1890, for Two thousand and twenty eight pesos ninety four cents; and that in case that Mr. Aboy should not return this document or promissory note at the time of executing said mortgage, the same shall then and there stand null and void.

At this point, the Judge asked the representatives of the parties hereto, whether they had any objection or statement to make, to which they answered that they had nothing absolutely to say, inasmuch as the parties themselves had reconciled and were satisfied. Immediately thereafter the authority referred to ordered the closing of this concil-atory proceedings and that copies thereof be issued to each of the parties at their request, subscribing their names to it, after the signature of the Judge, before me, of which I certify. There is the seal of the Court.—D. Alvarez.—R. Aboy Benitez.—Petra Quiñones.—F. Vidal—E. Urrutia.—Manuel N. Berrios. The foregoing copy concurs with the original of its contents to which I refer in so far as necessary; and at the request of Don Ramon Aboy Benitez, I issue the present O. K. by the municipal Judge on this sheet of paper stamped 10.—N. 0.016359 in Vieques, on the
32 5th of April, 1892.—There is a seal which reads Municipal Court of Vieques.—O. K. D. Alvarez.—Rubricated Manuel N. Berrios.—There is a draft stamp for $415.—We, the undersigned, jointly and severally, acknowledge that we owe, and promise to pay on the month of March of next year 1893, unto Messrs. V. Mourraille and Martineau or to their order, the sum of Four Hundred and Fifteen pesos, currency, which they supplied us for grubbing and cleaning our farm called Destino, situated in the Barrio of Puerto Ferre, which we have leased to said gentlemen, paying interest at the rate of one per cent monthly on the loan; to the faithful performance of which we pledge especially the year lease when the present document becomes due, as well as any and all property now belonging or which may hereafter belong to us, renouncing to all laws, privileges and rights which may help us to hinder the payment; and in contracting this obligation we declare that we possess our personal certificate issued by the local authority.—Vieques, August 20th, 1889. Clement Diaz.—Rubricated.—Santos Diaz.—Rubricated.—Witness: Jose Ramos—rubricated—Witness. Manuel Benitez Santana—rubricated.—There is a draft stamp, for $200.—I hereby acknowledge that I owe and shall pay unto Messrs. V/ Mourraille & Martineau, on the 25th of July, of the year 1892, or before, if possible, the sum of Two hundred pesos current money, which said gentlemen supplied me in sounding cash, which I received to my entire satisfaction, paying interest at the rate of one and a half per cent per month, on the amounts; to the faithful performance of which I bind all property now belonging or which may hereafter belong to me, and particularly, the part of the lease of the farm Destino, of which I am the owner, and which
33 I have leased to said Messrs. Mourraille & Martineau, renouncing my right to domicile, and to the laws which might favor me in hindering the payment. In Vieques on the 25th of July 1889—Clemente Diaz—rubricated—Witness—J. D. Choudens—rubricated—Augusto N. Delerme—rubricated—widow of Clemente Diaz—To Doctor Jaspar.—Debit—For prescriptions in June and July 1886 and 1887 $4.00. For visits to her husband and consultations with Doctor Puo, in 1889—$15.00. For two visits at the farm Destino and two in town: $6.00; for visits in town and

one certificate in 1889 to '91 and '92—$31 and $56. Vieques July 12th, 1892—Approved—Petra Quiñones, widow of Diaz—rubricated—Received from Don Ramon Aboy the amount of this account.—C. Jaspard.—*C. Jaspard.*—It is rubricated. On the back of the receipts of four hundred and fifteen pesos and two hundred, respectively, there is an indorsement which literally reads as follows: Pay to the order of Don Ramon Aboy the half concerning Don Clemente Diaz, value understood.—Vieques October 16th, 1893.—V. Mourraille & Martineau.—Rubricated—(Here translation in Spanish of the above indorsement which appears in French in the deed). Translation of the second: Pay to the order of Don Ramon Aboy, value understood.—Vieques October 16th 1892.—V. Mourraille y Martinaeu—rubricated.

The preceding insertions are a true copy of their originals attached to the expediente now started for the partition of the inheritance of Don Clemente Diaz, which documents I return to their owners rubricated.

Mr. Aboy y Benitez states: that from the promissory note of four hundred and fifteen pesos there is to be deducted the
34 half which corresponds to the co-owner of the plantation Destino, Don Santos Diaz, and consequently there remain two hundred and seven pesos fifty cents as the debt of the late Don Clemente Diaz, besides the two hundred of the other promissory note; fifty six pesos for medical assistance, and finally the acknowledgment of the debt as appears from the conciliatory act, amounting to two thousand and thirty five pesos three cents; and in addition thereto, the interests stipulated in the private documents amounting to two hundred and thirty six, eighteen cents making a total of Two thousand nine hundred and thirt*h* four pesos seventy one cents, which is the total amount owed to Don Ramon Aboy Benitez, for all items.

Doña Petra Quiñones, and Don Santos Diaz, each in their respective capacity herein, that is, the first as the widow in first nuptials of Don Clemente Diaz, and as the legitimate mother of the minor infant Don Clemente Diaz Quiñones, and Don Santos as defender of said minor, the first, ratifies the acknowledgement of the debt of two thousand two hundred and thirty five pesos and three cents, which her late husband owed to Don Ramon Aboy, as she acknowledged before the Municipal Court of this Town, and as appears in the act of conciliation hereinbefore inserted; and the said lady Quiñones, together with Don Santos Diaz, further acknowledge that the debts which appear in the private documents also above inserted, are legitimate debts, and therefore they acknowledge in the proper legal manner that the succession of the deceased Don Clemente Diaz y Gonzalez, is indebted to the said gentleman Aboy the said sum of two thousand nine hundred and thirty-four pesos seventy one cents for the items above and heretofore stated.

35 And Don Ramon Aboy Benitez having agreed to assign to the Agricultural and cattle raising partnership V. Mourraille & Martineau, two thousand six hundred and thirty pesos of

the total credit, recognized in his favor, he proceeds to execute the present deed under the following stipulations:

First. Don Ramon Aboy Benitez, does hereby assign to the agricultural and cattle raising partnership of Mourraille & Martineau residing at this town and represented by its active partner Don Victor Mourraille, the sum of Two thousand six hundred and thirty pesos currency, the receipt whereof is acknowledged by Mr. Aboy, prior to this act from said partnership, which he affirms and ratifies after having been warned by me the Notary that in view of such confession he is barred from taking any exception nor allege anything against the declaration which he makes of having received said sum, although it should be proven later that its delivery was not true in whole or in part.

Second. Don Victor Mourraile y Boneterre, in the name and representation of the partnership of V. Mourraille & Martineau solemnly accepts this section in the manner proposed by Don Ramon Aboy y Benitez, and both contracting parties declare be common consent that the assignor partnership remains subrogated in all its rights and actions belonging to Mr. Benitez on the credit assigned, the assignor however being obliged to guaranty the title to the same and to answer for all obligations for which the same might be liable according to law.

Third. Doña Petra Quiñnones and Don Santos Diaz, take notice of the assignment as recited in the preceding clauses, and
36 solemnly bind themselves to pay just the same to the assignor than to the assignee the sum which they should appear to owe to one or the other after the partition of the inheritance of the estate left by Don Clemente Diaz, upon his death, for the debts which he left pending.

In view of the above the parties hereto close this contract and of common accord designate this town as their legal domicile for any and all judicial and extra judicial proceedings which might arise thereunder.

I have warned the parties that they are bound to present a copy of this deed at the "Oficina Liquidadora" for the collection of the taxes charged for the transfer of property and real rights of this district within thirty days following the execution of this instrument, because if through their failure to present it the taxes should remain unpaid, they will be liable to a fine of ten or twenty five per cent on the amount of the liquidated tax, as the case may be, according to the provisions of the Regulations for the collection of the tax.

There being present at this act the parties hereto together with the subscribing witnesses Don Ricardo Romero and Don Eulogio Cruz y Velez, of this vicinity, and having read this deed to them after advising them that they had a right to read it by themselves, it is approved by the first and signed by the latter.

And I, the Notary, give faith as to my knowledge of the parties, their profession and residence, and of all that this public instrument contains.—Victor Mourraille.—Petra Quiñones widow of

Diaz—Santos Diaz—R. Aboy Benitez.—Ricardo Romero.—Eulogio Cruz.—Rubricated—Leandro Lara.—It is rubricated.—

37 Proceedings quoted: Don Carmelo Martinez y Rivas, Scriveneer of the Court of First Instance, of the town of Humacao. Certified: That in the expediente instituted by Doña Petrona Quiñones y Rodriguez asking for the appointment of a guardian (defender) for her son Don Clemente Diaz y Quiñones the following order was issued: In the town of Humacao, on the 30th of September, 1892, Mr. Romula Villahermosa y Borao, Judge of the First Instance thereof, and its district, in view of this expediente and of the preceding obligation and acceptance, said: That he ought to confer and did confer upon Don Santos Diaz y Gonzalez, resident of Vieques, the appointment of guardian of his nephew Don Clemente Diaz y Quiñones, the legitimate child of his brother germain Don Clemente Diaz y Gonzalez, to represent him in Court and out of court, and in the inventories valuation, partition and adjudication of the relict estate left at the death of his brother germain Don Clemente Diaz y Gonzalez, giving him the powers required by law, now only for said purpose but also for all matters in which his interests might be in opposition to those of his mother Doña Petra Quiñones y Rodriguez, and could not be represented by her according to law, and for all that he is thus appointed through the authority and judicial decree of his honor, directing that he be furnished with as many copies of this order as he may request. And it is so ordered.—Signed by said Judge before me, of which I certify.—Romulo Villahermosa.—Before me.—Carmelo Martinez y Rivas—And for the delivery to the guardian Don Santos Diaz y Gonzalez, who has requested it, I issue the present under my

38 signature in the town of Humacao, on the 25th day of November, 1892.—Carmelo Martinez y Rivas.—There is a seal which reads.—Escribania de Actuaciones.—of C. Martinez Rivas.—Humacao, Porto Rico.—Number seventy.—Extension of time of the Agricultural and Cattle raising partnership V. Mourraille & Martineau. In the town and island of Vieques, on the 10th of August, 1887, before me, Don Leandre Lara Tome, Notary of the Illustrious Territorial College of this province of San Juan de Puerto Rico, a neighbor and resident of this town.—Appear.—Of one part: Don Victor Mourraille y Bonneterre, 53 years of age, married, sugar planter, and resident of this town, as shown by the personal certificate (cedula) of the 4th class which he exhibits, stub number three, issued by the Mayor of this municipality under date of the 1st of July last past. And of the other:—Don Victor Martinez y Boyard of sixty years of age, married, sugar planter and resident of this town, as shown by the personal certificate of the 4th class which he exhibits stub number two, issued by the local authority of this island under date of July 1st, last. The parties hereto, to me personally known, have the legal capacity necessary for the execution of this deed of extension of the agricultural and cattle raising partnership which both have constituted, and to that effect, they set forth: 1. That by public deed executed by the parties hereto before the notary of Fajardo, Don Jose Felix Camulas, under date of June

10th, 1882, they constituted a partnership for agricultural and cattle raising purposes under the firm name of V. Mourraille & Martineau, for the development of agricultural and for raising of cattle and horses during a term of ten years beginning from the
39 said day of June 10th, 1882, under which date the said deed of constitution of partnership was executed.—2nd. That the main purpose of said partnership being that for which it was constituted, that is, to contribute by all means within their reach, to the development of agriculture and industry concerning the manufacture of sugar, several of the partners have agreed to change the old steam engine for another of the modern type commonly known by the name of Central which modification is now under way, expecting to have it finished so as to use it in the grinding of its products during the next crop; and inasmuch as this innovation with which they expect to obtain larger profits, has resulted also in larger expenditures, they have at the same time decided to extend the time of the partnership having in view if possible to perfect this new system, thereby reimbursing themselves of the expenses which they have been required to make, introducing to that end some modification in the said contract of partnership consisting in an increase of the capital of the same by the addition of another sugar plantation. And the parties hereto having agreed to extend the time of the partnership for the reasons set forth in the second paragraph of this public instrument, they carry the same into effect through the present deed under the following stipulations: First: Don Victor Mourraille and Don Victor Martineau, have mutually agreed that the period of duration of the agricultural and cattle raising partnership doing business in this place under the firm name of V. Mourraille & Martineau, which was constituted by both of the partners thereto, as appears from the said deed dated June 10th, 1882, is
40 hereby extended for eight additional years from the ten for which it was constituted, and therefore, instead of the partnership ending on the 10th of June, 1892, it will end the said day of June 10th, 1900, with the purpose of contributing to the development of the sugar industry, reforming if they so see fit the system of machinery of the central and at the same time for obtaining within a longer period of time larger profits, as it is with that object that they have associated.

Clause of the former contract which is maintained in force in this extension: Second. By the present contract they hereby establish on this date a singular partnership, for agricultural and cattle raising purposes, under the firm name of V. Mourraille & Martineau both partners being in charge of the management of the society and use of the firm signature, but Don Victor Mourraille shall be specially in charge of the agricultural operations and of the work which the cattle might require, wherefore in compensation for supervision he is hereby assigned for a period of time of this contract a yearly pension of two thousand six hundred pesos payable in monthly installments to be charged to the general expense account.—Third. On contract of Extension.—The parties hereto do hereby stipulate that the clauses of the deed of June 10th, 1882,

constituting the agricultural and cattle raising partnership V. Mourraille and Martineau are to be held null and void whenever conflicting with those expressed in this public instrument and there shall remain in full force and effect those which are not in conflict with what has been herein agreed and covenanted.

There being present at this act the contracting parties, together with the subscribing witnesses, Don Jose Alba, and Don
41 Eulogio G. Blanco, of this vicinity, and this deed having been read by me after advising the parties that they have a right to read it each by himself, the first lend their consent and sign together with the latter. I, the Notary give faith as to my knowledge of the parties, their residence and occupation and of all of what this public instrument contains. At this stage, the contracting parties state that neither in the present deed, nor in the deed hereinbefore mentioned relative to the constitution of the partnership V. Mourraille & Martineau, no provision has been made, for the event of the death of any of the two partners, prior, to the expiration of the partnership, and considering that it is to their interest to make such provision, they by mutual agreement have decided to add it to this document as follows: In the event that prior to the expiration of the time for which it has been constituted and extended the partnership V. Mourraille and Martineau, that is prior to the 10th of June of the year 1900, there should occur the death of the partner Don Victor Martineau, it is agreed between the parties that the said partnership shall continue in business in the same manner as heretofore constituted up to the termination of the time to which it has been extended, in consideration of the great confidence which Mr. Mourraille inspires to Mr. Martinez, as he has been for several years the manager of the estates which they jointly possess as well as the said partnership, and his administration has been highly satisfactory; but if it should happen prior to the year 1900 the partner Don Victor Mourraile should die, the heirs of said gentleman may at their discretion, dissolve or continue said partnership, as they deem best. This addition
42 having been read by me to the parties hereto and to the witnesses mentioned, the first ratify its contents and sign with the latter, of all of which I give faith. V. Mourraille.—V. Martineau.—Jose Alba.—Eulogio G. Blanco. Rubricated.—Leandro Lara.—It is rubricated.—And at the request of the parties I issue, rubricate and sign this first copy on this day of its execution, on a sheet of paper of the first stamp and three of the eleventh, numbers 1831, 132,000,442,132,441,132,432—respectively which is a true copy of its original on file in the current protocol of this Notary, and having made an entry to that effect.

And at the request of the partnership V. Mourraille & Martineau, I sign, rubricate and issue this first copy on a sheet of paper of the second class, authorized to be used and five of the 11th class numbers 850, and from 113,256 both inclusive, which is a true copy of its original placed on file in the current protocal of this Notary, having made an entry of this copy on this 30th day of June, 1893.—I give faith.

(Signed) LENADRO LARA.

Presented on this day this document it will appear in the book of Liquidations under number 33.—Humacao July 22nd, 1893.

Messrs. V. Mourraille & Martineau have paid in accordance with the liquidation made and approved, at 50% under number 63 of the Tariff the sum of twenty pesos forty nine cents official money on account of the above document, which amount was paid in the Custom House of this town as shown by the receipt number 125 of the 19th inst. Humacao August 21st, 1893.

(Signed) FELICIANO, ETC.

43 Administration of Rents and Customs of Humacao.

Receipt Corresponding to Warrant No. 125.

Number 125.

Budget for 1893-94.

Section 1, Chapter 1, Article 30.

The Administration of Rents and Customs of Humacao.

Received from Messrs. Mourraille & Martineau, the sum of Twenty Pesos forty nine cents, which they owed to the State for Real rights. (Royal dues.)

And of this receipt note must be taken at the Comptroller's office without which requisite it will be null and void.

Humacao, August 19th, 1893.

LUIS, ETC.

For $12.49.
Noted.

The Comptroller,
EDUARDO, ETC.

Entry made.
Entry made at the Treasury.

To the Auditor of Local Administration of Rents and Customs of Humacao:

I certify that Messrs. Mourraille & Martineau have paid on this day at this office, the sum of Twelve Pesos forty-nine cents for royal dues, — pesos — for interest and arrears and — and pesos —
44 cents for fine all as per liquidation made by the "Liquidator del Impuesto" of this town, and therefore that I have issued him a receipt No. 125 corresponding to — warrant — numbers 125.

In witness whereof, and in compliance with the provisions in article 115 of the Regulations for Royal Dues I issue the present

O. K.'d by the Administrator in Humacao, on the 19th of August of 1893.

(Signed) EDUARDO, ETC.

O. K.
SHELLY,
Administrator.

The above is a correct translation.
(Signed) F. FANO,
Interpreter & Translator U. S. Court.

45 PLAINTIFF'S EXHIBIT "B."

Filed December 20, 1911.

To the Registrar of Property of Humacao.

SIR: Damian Monserrat, Attorney for Clemente Diaz in certain civil proceedings followed before the Federal Court of this Island, respectfully requests:

That in order to prove certain facts before said Court, he needs a literal certified copy of the inscriptions first and second, entered in that Registry referring to the following described property:

"Farm situated in the wards of Florida and Puerto Ferre, in the municipality of Vieques. It has an area of One Hundred and thirty-one cuerdas, fifty hundredths, equivalent to fifty-seven hectares, five ares, and eighty-three centiares; bounded on the North by the plantation "Santa Maria" belonging to Don Carlos Le-Brun; on the South by lands of Ildefonso Leguillon and Eufrasio Colon; on the East by a property of Messrs. Mourraille y Martineau and on the West by a farm of Santos Diaz. This property appears inscribed in volume 7 of Vieques, property number 321, at folios 149 and following.

In virtue whereof I hereby request that said certificate be issued under the terms above stated.

San Juan, for Humacao, November 15th, 1911.

Respectfully,

DAMIAN MONSERRAT,
Lawyer for Clemente Diaz.

Presented on this 17th day of November 1911.
THE REGISTRAR.

I, Miguel Planellas Yañez, Registrar of Property of the city of Humacao, Puerto Rico, and its District,

Certify: That at folio 149 of volume 7 of Vieques, there appears the first inscription of property numbered 321 which literally copied reads as follows:

1. Rural. Farm situated in the wards of la Florida and
46 Puerto-Ferre, in the municipality of Vieques. It has an area of One hundred and thirty one cuerdas and fifty hundredths,

of land, equivalent to fifty seven hectares, five ares, eighty three centiares. It is bounded on the North by the plantation "Santa Maria"; on the South by Don Ildefonso Leguillon and Don Eufrasio Colon; on the East by Don Victor Mourraille, and on the West by Don Santos Diaz. This farm, as a part of the farm "Destino" is subject to a lien for One thousand two hundred pesos in favor of Don Miguel Kearney, as appears from the entry made at folio 112, over, in book 11 of the old "anotaduria". Don Clemente and Don Santos Diaz y Gonzales, acquired, undivided, share and share alike, the main property, the same having been adjudicated to them in payment, as appears from inscription number four made in that same volumd at folio 48, property number 304. The said Don Santos Diaz y Gonzalez in his own right, and Doña Petra Quiñones y Rodriguez, both residents of Vieques, by herself, and in representation of her minor son Don Clemente Diaz Quiñones, heir of the former, with the purpose of making a partition of the estate of the principal, and not seeing fit to continue holding the same as community property, decided to make a new survey of the same, from which it resulted that it contained four hundred and forty three cuerdas of land, equivalent to one hundred and seventy four hectares, eleven ares, sixty seven centiares, less acreage than that appearing in the Registry, the interested parties declaring that the difference observed was due to an error of calculation in making the first survey, wherefore they ratify the second survey, and each of them adjudicates himself one-half of said property, there corresponding to Don Clemente Diaz y Gonzalez, and it being adjudicated to him in payment of his joint interest a tract of One hundred and thirty one cuerdas and fifty hundredths of land, which is the property of this number.

In virtue thereof, Don Clemente Diaz y Gonzalez inscribed in his favor the property of this number which is adjudicated to him in payment of his joint interest. All of the above appears from
47 a first copy of an act of description and division of property executed in the town of Vieques, on the 1st of February ultimo, before the notary of the same Don Leandro Lara, which document has been presented to this Registry at 10 o'clock on the 15th of March last past, as per entry number 29, folio 8, over, volume 7 Journal. No royal dues have been paid because the document presented is not subject to that tax.

And the above being in conformity with the Registry, and with the document to which reference has been made, I sign the present in Humacao, on April the 11th 1894.—Fees number 7 of the tariff; 4 pesos fifty cents. Feliciano Piñol.

I also certify; That the second inscription of said property entered at folio 150 of the same volume aforesaid, literally copied reads as follows:

Rural. Tract of land situated in the wards of Florida and Puerto Ferre, its extension, description, boundaries and other circumstances appearing from the preceding inscription number one, equal to that made in the title now presented, with the difference that in the latter the plantation Santa Maria bounding the same on the North, is now owned by Don Carlos Lebrun, and that it is bounded on the East

by lands of Messrs. Mourraille & Martineau. It is subject to a lien for One thousand two hundred pesos in favor of Don Miguel Kearney. Don Clemente Diaz y Gonzalez, an ex-resident of Vieques, acquired the property of this number by adjudication to him in part payment of a joint interest, made to him by Don Santos Diaz y Gonzales, as it appears from the said inscription number one, and he having died intestate in said town on April 30th 1890, there existing no proof of his having executed a will, his widow, Doña Petra Quiñones y Rodriguez, resident of said town appeared before the Judge of First Instance of this District, asking that, after taking the legal steps provided for in Section 2nd, title 9, book second of the Code of Civil Procedure, her sole and legitimate son Don Clemente
48 Diaz y Quiñones. Having carried out the provisions contained in said section, and having first heard and secured the approval of the Fiscal, the Judge of First Instance of this District, Sr. Romulo Villahermosa, before the scrivener of the Court Don Carmelo Martinez, issued an order under date of August 5th, 1892, declaring heir intestate of the late Don Clemente Diaz y Gonzalez, his legitimate son Don Clemente Diaz Quiñones without prejudice to a third party showing a better right.

Having made the partitions by common accord, by the widow and the attorney representing the minor, the Court issued an order dated December 27th, of the year last past approving the operations made and directing the same to be protocolized and that a copy thereof be issued and given to each of the interested parties showing their respective shares of the inheritance. Under said partition, the property of this number was adjudicated to the creditors Messrs. V. Mourraille & Martineau in payment of a debt, placing a value of two thousand six hundred and thirty pesos on the same. In virtue thereof, Messrs. V. Mourraille & Martineau, inscribe in their favor the property of this number which has been adjudicated to them in payment.

All of the above appears from a first copy of a notarial act of protocolization of division of property executed in the town of Vieques on the first of February ultimo before the notary thereof Don Leandro Lara, which document has been presented at this Registry at 10 o'clock on the 15th of March last past, according to entry number 29 at folio 8 over, volume 7 of the Journal. Paid for Royal dues the sum of Thirty nine pesos forty five cents, official money, as per receipt number 757, issued by the Custom House of this city on the 14th inst., which remains on file in the docket of its class under number 147. And it being in accordance with the Registry and with the document to which I refer, I have hereunto set my hand in Humacao on April 18th, 1894.—Fees No. 7—of the Tariff. Six pesos fifty cents.—Piñol.

And finally I certify: That the two foregoing inscriptions
49 appear cancelled by inscriptions third and fourth of the same property, at folios 151 and 152 of said volume 7 of Vieques, a literal copy of which follows, in accordance with article 292 of the Mortgage Law.

3. Rural. Tract of land in the wards of La Florida and Puerto Ferre, its area, description, boundaries and other circumstances ap-

pearing from the preceding inscription number one, which are alike to those shown on the title now presented, except that according to the latter the equivalence of its area is fifty one hectares, sixty eight ares, thirty seven centiares. It is subject to a lien for twelve hundred pesos in favor of Don Miguel Kearney, according to the preceding inscription. It is valued at Two thousand seven hundred and thirty pesos. The agricultural partnership V. Mourraille & Martineau resident of Vieques, constituted by its partners Don Victor Mourraille y Boneterre and Don Victor Martineau y Boyard or Voyard, acquired this property by adjudication in payment of debts of the estate of Don Clemente Diaz, as appears from the preceding inscription; and Don Victor Martineau y Voyard, resident of Vieques, having died on the 20th of February 1893, under a nuncupative will executed in the town of Isabel Segunda in the Island of Vieques on May 19th, 1891, before the notary of this city Don Marcelino Estevanez, in which he declares as his property, that to which he may be entitled to in the partnership V. Mourraille & Martineau, aforesaid, and instituted as his sole and universal heirs of all his estate rights and actions, his two only surviving daughters, named Doña Maria Amelia and Doña Maria Luisa Noemi Martineau y Garnier in the amount of two thirds of the capital of the testator, and the remaining third to his legitimate wife Doña Virginia Garnier, that is to say; one third of the capital to each of his daughters and to his wife: but that according to a deed of partition of property executed by said heirs in the town of Vieques, on July 8th ultimo, before the notary thereof, Don Leandro Lara, the said Virginia Garnier or Maria Catalina Virginia Garnier renounced *to* her share, accepting only what belonged to her as conjugal property and as dowry from the estate of the inheritance. And in order to be able to inscribe several deeds relating to various transactions which took place between the said mother and daughters and Don Victor Mourraille, they have asked that there be inscribed in their favor, undivided, and by virtue of said will, the rights and actions which the late Don Victor Martineau y Voyard had in the partnership V. Mourraille & Martinea, among which properties, there is included the property of this number. In virtue thereof, Doña Maria Catalina Virginia Garnier and her daughters, Doña Maria Amelia and Doña Maria Luisa Noemi Martineau y Voyard, do hereby inscribe in their favor undivided, the interest or rights which Victor Martineau had in the property of this number without designating the proportional share belonging to each of them, for the reason that this has been the object of another transaction. Under the same title there are comprised seven other properties which appear inscribed where the attached marginal note indicates. All of the above appear: from the certificate of death of the testator Don Victor Martineau, issued in Vieques by the municipal judge Don Jose Diaz Prado, before the Secretary Don Francisco Justiz on the 7th of February ultimo; from the first copies of the will of said gentleman, and from the deed of partition above mentioned, and from a deed of dissolution of the partnership V. Mourraille & Martineau, executed on May 31,

ultimo, before the said notary Don Leandro Lara, wherein the property of said partnership is described, and from a petition signed by Don Jose C. Bajandas, on the 6th inst. as verbal mandatory for the widow Garnier, asking that it be inscribed undivided in favor of the heirs of Martineau by virtue of the will.

The presentation, payment of fees and other facts appear from the inscription herein number 17 at folio 137, of volume 5 of this same municipality property number 55 triplicate, to which I refer.

Humácao, September 14th, 1894. Fees: No. 7 of the tariff,
51 5 pesos 85 cents. Piñol.

4. Rural. Tract of land without name, situated in the wards of Florida and Puerto Ferre, in the municipality of Vieques, its area, description, boundaries and other circumstances appearing from the foregoing inscriptions number- 1 and 3, exactly alike to that made in the title now presented. It appears subject to a lien for One thousand two hundred pesos in favor of Don Miguel Kearney, according to inscription number two, above. Its value does not appear, it being embodied in that of the plantation "Campo Asilo". The agricultural partnership V. Mourraille & Martineau acquired this property by adjudication, in payment of debts of the estate of Don Clemente Diaz, as appears from the foregoing inscription number two, and it having been agreed by the managing partner Victor Mourraille y Boneterre and by the heirs of the other partner Don Victor Martineau, to wit: his widow Doña Maria Catalina Virginia Garnier, Doña Maria Amelia Martineau de Bordesse, together with her husband Don Gabriel Bordesse, all residents of Vieques; and Doña Maria Luisa Noemi Martineau, resident of Paris, France, represented by her mandatary Madame Garnier, as per power of attorney granted her in Paris on the 15th of August last past, accompanied by, and with the consent of her husband Don Esteban Luis Bordesse, before the notary of said capital, Maitre Pablo Agustin Huiller, duly legalized and translated, inserted herein, to dissolve the partnership V. Mourraille & Martinezu, the former in his capacity as managing partner of the said firm, and the other three parties representing the legitimate heirs of their father Don Victor Martineau, as appear from the above inscription number three, and to distribute among themselves the assets of the same in payment of their respective shares in said partnership, they have adjudicated to Don Victor Mourraille y Boneterre, the property of this number together with six other properties and an interest in another farm, which appear inscribed where the
52 attached marginal note indicates. In virtue thereof, Don Victor Mourraille y Boneterre inscribed in his favor the property of this number which has been adjudicated to him in payment of his partnership share and for the payment of debts.

All of the above appears from the first copy of a deed of dissolution of partnership executed in the town of Vieques on May 31, ultimo, before the notary thereof, Don Leandro Lara. The presentation payment of fees and other facts appear from inscription number 18 at folio 138 over, volume 5 of this same municipality, property number 55 triplicate, to which I refer. Humacao, Sep-

tember 18th, 1894. Fees No. 7 of the tariff; 5 pesos 85 cents. Piñol.

The foregoing transcripts are literal insertions from the entries existing in the volumes and folios cited at the begin-ing, to which I refer.

It so appears from the books of Inscriptions of this Registry of Property.

And at the request of Don Damian Monserrat, as attorney for Clemente Diaz, I issue the present in Humacao, on November 29th, 1911.

MIGUEL PLANELLAS,
Registrar of Property.

There have been cancelled internal revenue stamps to the value of $4.00 in accordance with number 6 of the tariff. Humacao date ut supra.

The Registrar: Miguel Planellas.

The above is a correct translation.

(Signed) F. FANO,
Interpreter & Translator U. S. Court.

53 (Journal Entry, April 15, 1912.)

In the District Court of the United States for Porto Rico.

794. Law.

CLEMENTE DIAZ Y QUIÑÓNES
vs.
NANCY NEGRON LONGPRE et al.

The demurrer to the reformed and amended answer filed by the plaintiff in the above entitled cause, is hereby sustained and the defendants are granted the time provided by law to amend their answer, to which ruling the defendants duly object and except.

54 (Filed April 15, 1912.)

In the District Court of the United States for Porto Rico.

No. 794. Law.

DIAZ
vs.
LONGPRÉ.

Ejectment. On Demurrer to the Answer.

This action was originally brought, in ejectment, in the District Court of Porto Rico, for the District of Humacao, by the plaintiff

claiming, as the sole heir of his deceased father, Clemente Diaz y Gonzalez, the ownership and right of possession in and to certain lands, the property of his father at the time of his decease, and not forming a part of the conjugal partnership between his father and mother, which were situated on the island of Vieques, Porto Rico, in the District of Humacao.

Without going, in detail, into the allegations and counter allegations of the complaint and answer, it is sufficient to state that it was alleged by the plaintiff that:—his father died when he, the plaintiff, was two years old, leaving his mother (since remarried to one Longpre), as his natural guardian; that his said mother, and a person appointed the guardian ad litem of plaintiff, did, in the year 1894, and when the plaintiff was an infant of tender years, proceed to partition the real-estate owned by his father at the time of his death, and to confess that his father owed certain debts to the predecessors in title of the defendants Mourraille, the amount of which was greatly less the value of the estate left by his father, to two-
55 thirds of which the plaintiff was entitled in absolute fee simple on the instant of the death of his father, and to a qualified fee simple in the remaining one-third, subject to the life estate of his mother; that the land claimed by the plaintiff was, thereupon, sold to the predecessors in title of the defendants Mourraille, for the amount of the alleged debt, and that all of said proceedings were without warrant of law, and void, as not being in compliance with the law in force at the time of the acts complained of, and prayed that all proceedings had in relation to the premises be held to be null and void, that the entries in the Registry of Property be cancelled, that the defendants be held to account for, and to pay to the plaintiff the mesne profits of the land, that the plaintiff be put into possession thereof, that the defendants pay the costs of the proceeding and an attorney's fee, and for general relief.

This action was filed on December 16th, 1910, within one year after the emancipation of the plaintiff. On December 23rd, 1910, the defendants, by their attorneys, filed in the District Court of Humacao a motion for the removal of the action to this Court, together with the bond required by law, and, on December 27th, 1910, a demurrer to the complaint. The order of removal was made on December 28th, 1910, and the case was, thereafter, in this court.

A motion, in behalf of plaintiff, to remand to the District Court of Humacao was denied; the pleadings of both parties were, from time to time reformed, and the matter is now presented on the demurrer of plaintiff to the reformed and amended answer of
56 defendants, the ground laid being a failure to state facts sufficient to constitute a defense, and that the answer is ambiguous, uncertain and unintelligible.

The amended answer is in part a denial, and in part affirmative, to the effect that all the proceedings had by the defendants, and their predecessors in title were regular, and in accordance with the law in effect at the time of the acts complained of. The issue is raised by the demurrer.

Opportunity for extended argument was afforded counsel for both

parties, and most able and exhaustive briefs were presented on behalf of plaintiff and defendants, setting out with earnest advocacy the result of their profound research into the sources and authority of the Spanish law, and of its force and applicability to the law now in force in Porto Rico.

It is needless to say that both arguments and briefs have received the labor-ous, careful, and conscientious consideration of the Court.

Under the conclusion which has been reached, it is unnecessary, and would be a duplication, to go into a detailed consideration of the arguments and authorities presented.

It is contended on behalf of the defendants that the contention of the plaintiff is, in effect, a collateral attack on the judgment of a court having jurisdiction, which constitutes the logical fallacy denominated a "petitio principii," in that it presupposes, as a basis for the contention and the conclusion that the court making the orders—in this case, the District Court of Humacao—possessed the requisite jurisdiction under the law in force; whereas, the very crux
57 of the contention of plaintiff is that it was without such jurisdiction.

Attack on the judgment of a court is only collateral when the Court making the adjudication had jurisdiction. This whole controversy hinges upon the fact whether the District Court of Humacao had jurisdiction to make the orders it did make, in relation to the subject matter of this action. It appears clear to this Court that the District Court of Humacao did not possess jurisdiction, under the facts as shown by the transcripts of its proceedings, and the law then in force. Therefore, its adjudication was a nullity, and the present proceeding does not constitute a collateral attack.

It is claimed on behalf of defendants that the remedy of plaintiff, if any he has, is in equity, and not, as in the present proceeding, at law, by an action of ejectment. Ejectment is, essentially, a remedy for one, who claiming paramount title, is out of possession. The verdict of a Jury, and the judgment of a court, if favorable to a plaintiff, immediately result in a restoration of possession; and may be followed by such ancillary proceedings, in law, or in equity, or in both, as will entirely adjust the rights of the parties.

And, although it is true that a court of equity, having once assumed jurisdiction, will retain it for all proper and necessary purposes, it is also true that, under our law, the proper proceeding for a claiming owner, not in possession, being an action for ejectment, and the rights of such claimants, under the law in effect in Porto Rico, include a trial of such right by a jury, and the original proceeding in this matter having been instituted by the plaintiff in a forum which the defendants now claim to be the only forum having jurisdiction, but from which it was removed to this
58 Court by the defendants, such a contention comes illy from their mouths.

As to the necessity of an allegation of fraud in the complaint, in order that the plaintiff may maintain his contention, it is not perceived by the Court, under the issues as joined, that such necessity

exists. The plaintiff fails or succeeds as he is able to establish his allegations, any apply existing law; and the jury, under the instructions of the court, is the arbiter of the opposing contentions.

If the plaintiff fails to establish the irregularities and failure of compliance with existing law of which he complains, he does not succeed; if he does establish them, the nullity of the proceedure which was taken does not necessarily carry with it, the legal implication of fraud, any more than a mistake, or of ignorance.

Nor is a tender of purchase price from the plaintiff to the defendants legally necessary as a pre-requisite to bringing the present action, under the pleadings, and the exhibits in the record. In case the plaintiff should succeed in his contention all proper deduction for purchase price paid by defendants, or their predecessors in interest, can be made under the order and supervision of the Court, as well as any other adjustments which, in that, or in any other event, may be necessary in the furthurance of justice.

The demurrer of plaintiff to the reformed and amended answer of the defendants will be sustained, and the defendants are granted the time provided by law to amend their answer.

April 11th, 1912.

(Signed) PAUL CHARLTON, *Judge.*

59 (Filed April 22, 1912.)

In the District Court of the United States for Porto Rico.

At Law. No. ——.

CLEMENTE DIAZ Y QUIÑONES, Plaintiff,
versus
NANCY NEGRÓN LONGPRE, GUSTAVO MOURRAILLE, EMILIA MOURraille, Love Mourraille, Matilde Mourraille, Victor Mourraille, Defendants.

Ejectment and Mesne Profits.

Amended Answer.

Now come the defendants, by their attorneys pursuant to order of the Court of April 15, 1912, present their amended answer herein, and answering say:

I.

The defendants have no information as to the facts set out in paragraph I of the complaint, and therefore they deny the allegations contained therein.

II.

Defendants admit the allegations contained in paragraph II of the complaint.

III.

Defendants deny all the allegations contained in paragraph III of the complaint.

60

IV.

Defendants deny allegations in paragraph IV of the complaint, except the allegation that Clemente Diaz y Gonzales died intestate in the Island of Viequez on the 30th day of April 1890, and that the Plaintiff is his only son.

V.

Defendants have no information as to the allegations contained in paragraph V of the complaint, and therefore they deny the same.

VI.

Defendants deny the allegations contained in paragraph VI of the complaint, except that the firm of Mourraille & Martineau took possession of the property described in paragraph III of the complaint in the month of February 1894.

VII.

Defendants admit that the firm of Mourraille & Martineau was dissolved, and that said property was delivered to the senior partner of said firm, Victor Mourraille, the predecessor in title of these defendants, but deny that the possession of said property by the firm of Mourraille & Martineau or by Victor Mourraille, was wrongful.

VIII.

Defendants deny the allegations contained in paragraph VIII of the complaint.

IX.

Defendants deny the allegations in paragraph IX of the complaint except in so far as the same alleges that Victor Mour-
61 raille took possession of said property and acquired the right and interests of the partnership of Mourraille & Martineau.

X.

Defendants admit the allegations of paragraph X of the Complaint.

XI.

Defendants deny the allegations of paragraph XI of the Complaint.

XII.

Defendants deny the allegations of paragraph XII of the Complaint.

New Matter.

I.

These defendants are informed and believe that the plaintiff Clemente Diaz y Quiñones was under the patria potestas of his mother Doña Petra Quiñones from February 1, 1894, to the date upon which it is alleged that the defendants took possession of the property described in the complaint down to the filing of this suit, or shortly prior thereto, and that under Sections 158, 159, 160, et seq. of the Civil Code then in force, and of Sections 224, 225, & 226 of the present Civil Code the usufructs or rents and profits of said farm did not belong to, nor were they the property of the plaintiff, nor was he entitled to the possession of said property or the usufruct thereof during said period, but the usufruct of said farm belonged to the plaintiff's said mother, and that the plaintiff cannot recover, therefore, in this suit.

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II.

The defendants are informed and believe that said Petra Quiñones, mother of plaintiff, is still alive, and so allege the fact to be, and that under sections 834 et seq. of the Civil Code in force in Porto Rico at the time of the decease of the father of the plaintiff and Section 821 et seq. of the Civil Code now in force, she has the usufructuary right or interest in and to one-third of the land described in the complaint herein if plaintiff is the legal owner thereof, which defendants deny, and as such usufructuary is entitled to the use and possession of said one-third undivided interest in said property, and that no partition of said property having been made, and all the right, title and interest of said Petra Quiñones in said farm having been duly transferred to the predecessors in interest of the defendants on the 27th day of December, 1893, the plaintiff cannot recover said property in this class of proceeding in accordance with Sections — of the Civil Code now in force.

III.

That said Petra Quiñones, mother of Plaintiff, was entitled to and had a usufructuary interest in one-third of said property described in the complaint during her lifetime, if plaintiff is the owner thereof, which defendants deny, and that she ceded all her right, title and interest to the same to the predecessors in interest of these defendants in the adjudication made of said property on the 24th day of June, 1893, and that said mother of plaintiff being still alive, the plaintiff has no right or interest in the usufruct of said one-third interest in said estate at the present time, nor has he
63 at any time heretofore had such right or interest, and that he is not entitled to the possession of the one-third undivided interest in said estate.

IV.

The defendants are informed and believe that no division of the estate of the deceased Clemente Diaz y Gonzalez, father of plaintiff, has ever been made, and that Doña Petra Quiñones the mother of said plaintiff, still survives, and that as wife of said deceased Clemente Diaz y Gonzalez, she became a co-heir with the plaintiff; and that said farm has never become the sole property of the Plaintiff, and that he has never been, and is not at the present time, entitled to the individual possession thereof, in accordance with Sections 401 of the Civil Code now in force.

Counterclaim.

These defendants allege that on the 23rd day of June, 1893, their predecessors in interest were adjudicated the parcel of land described in the complaint in a proceeding for the settlement, partition, and adjudication of the estate of the deceased Clemente Diaz y Gonzalez in payment of the sum Two thousand six hundred and thirty (2,630) pesos of the money then current in Porto Rico, which said sum was due from the deceased Clemente Diaz y Gonzalez to the firm of Mourraille & Martineau, the predecessors in interest of these defendants, and that said sum of money was a fair and just
64 valuation of said property at that time, and that if the plaintiff is entitled to recover said farm or any part thereof (which these defendants deny), then the defendants are entitled to recover from and against said plaintiff the sum of two thousand six hundred and thirty (2,630) pesos with interest thereon at six per cent. from the first day of February, 1894, and the defendants pray judgment against the plaintiff for said sum.

Wherefore the defendants pray judgment in their favor in this cause, and for their costs and expenses herein.

(Signed) H. H. SCOVILLE,
Attorney for Defendants.

H. H. Scoville, being duly sworn says that he is attorney for the defendants in the above entitled cause; that he has drawn the above answer and counterclaim; that the facts stated therein are true except those alleged on information and blief, and as — those he believes them to be true; that he makes this affidavit because the only one of the defendants in Porto Rico is in the Island of Vieques and it would be a hardship to have him come to San Juan solely for this purpose.

(Signed) H. H. SCOVILLE.

Subscribed and sworn to before me this 22nd day of April, 1912.

(Signed) RAFAEL GUILLERMETY, *Clerk*,
" By N. V. COLBURN, *Deputy*.

65 In the District Court of the United States for Porto Rico.

(Journal Entry April 23, 1912.)

#794. Law.

CLEMENTE DIAZ Y QUIÑONES
vs.
NANCY NEGRON LONGPRE et al.

Upon motion of Joseph Anderson, Jr., plaintiff is given leave to file amended complaint by interlineation.

66 In the District Court of the United States for Porto Rico.

(Filed April 25, 1912.)

At Law. #—.

CLEMENTE DIAZ Y QUIÑONES, Plaintiff,
vs.
NANCY NEGRÓN LONGPRÉ, GUSTAVO MOURRAILLE, EMILIA MOURraille, Love Mourraille, Matilde Mourraille, Victor Mourraille, Defendants.

Ejectment & Mesne Profits.

Amendment to Amended Answer Filed on the 22nd Day of April, 1912.

Now come the defendants herein by their attorney and amend their answer filed in this cause on the 22nd day of April, 1912, by adding thereto as paragraph V of said answer, the following.

V.

Defendants allege that their predecessor in interest acquired the real estate described in the complaint in good faith, and that they had no knowledge of any defect in their title thereto, and that the same was duly inscribed in the Registry of Property of Humacao without any defects, and that these defendants have since they came into possession of said property by inheritance from said predecessor in interest the same being the father of these defendants, continued in the possession of said property in good faith and
67 without knowledge of any defects therein (if there be any defects in said title), and that on account of said possession in good faith they were entitled to the usufruct of said property until the date of the filing of this suit, under Articles 451 and 452 of the Civil Code in force at the date of the acquisition of said property, namely 1894, and under sections 436, 453, and 454 of the Civil

Code now in force, and that the plaintiff is not entitled to recover the rents and profits of said place prior to the date of the commencement of this suit.

San Juan, Porto Rico, April 26. 1912.

(Signed) H. H. SCOVILLE,
Attorney for Defendants.

68 In the District Court of the United States for Porto Rico.

(Journal Entry April 25, 1912.)

#794. Law.

CLEMENTE DIAZ Y QUIÑONES
vs.
NANCY NEGRON LONGPRE et al.

The parties by their attorneys come, and are at issue, and a jury being called come as follows, to wit:

Jose E. Muñoz.	Henry Simonet.
Manuel E. Saldaña.	Albert Hundson.
Arturo Gonzalez.	Gregorio Ledesma.
Frank Harding.	N. Megwinoff.
B. A. Cheney.	Jose Clivilles.
Edgar L. Humphery.	Angel A. Rossy.

Who being duly impaneled and sworn the trial is proceeded with. All the evidence in behalf of the plaintiff is heard and concluded, and then and there the hour of adjournment having arrived, the trial of the above entitled cause is ordered to be continued on Monday, April 29th, 1912, at 10 o'clock A. M.

Journal Entry April 29, 1912.

The parties by their attorneys come, and by stipulation filed herein, agree that the trial of the above entitled cause be continued, with eleven jurors, which is authorized by the court. All the evidence on behalf of the defendants is heard and concluded.

69 The Jury hear the arguments of counsel and the instructions of the court on the law in the case, and then and there retire to their room to consider of their verdict.

Journal Entry April 30, 1912.

Now on this day comes the Jury under the custody of the United States Marshal, and in response to the question of the Court in that regard, say that they have agreed upon a verdict, as follows, to wit:

Verdict.

"We, the Jury find, by direction of the Court, that the Plaintiff is entitled to the possession of the land in controversy, and assess his damages in the sum of $10,140 Dollars and 67 cents, for the retention thereof.

(Signed) B. A. CHENEY, *Foreman.*"

Which said verdict is read by the Clerk and the Jury being asked if that is their verdict, they all answer that "it is". And thereupon the Clerk is ordered to file and enter of record said verdict, and the Jury is discharged for further consideration of this cause.

Judgment.

Wherefore, it is ordered and adjudged that Clemente Diaz y Quiñones, the plaintiff herein, is the owner and entitled to the immediate possession of the property described in the complaint, that is to say:

70 "A piece and parcel of land situated in the Barrios Florida and Puerto Ferre within the Municipal District of Vieques, and with an area of 131 cuerdas and 50/100ths of another, equivalent to 57 hectares, 5 areas and 83 centiareas, bounded on the North with the estate known as "Santa Maria" property of Carlos Lebrun; on the South by the lands of Ildefonso Leguillón and of Eufrasio Colón; on the east by the farm formerly of Mourraille y Martineau; and on the West by the property of Santos Díaz."

and the plaintiff, Clemente Diaz y Quiñones, do further recover from said defendants, Nancy Negrón Longpré, Gustavo Mourraille, Emilia Mourraille, Love Mourraille, Matildo Mourraille and Victor Mourraille, the amount of Ten Thousand One Hundred and Forty Dollars and sixty Seven cents ($10,140.67) damages, with interest thereon at 6% from this date until paid and his costs herein laid out and expended, to be taxed by the Clerk, for which sums execution may issue.

71 (Filed June 3, 1912.)

In the District Court of the United States for Porto Rico.

At Law. No. —.

CLEMENTE DIAZ Y QUIÑONEZ, Plaintiff,
versus
NANCY NEGRÓN LONGPRE, GUSTAVO MOURRAILLE, EMILIA MOURraille, Love Mourraille, Matilde Mourraille, Victor Mourraille, Defendants.

Ejectment and Mesne Profits.

Petition for Writ of Error.

Nancy Negrón Longpré, Gustavo Mourraille, Emilia Mourraille, Love Mourraille Matilde Mourraille and Victor Mourraille, defendants in the above entitled cause, feeling themselves aggrieved by the verdict of the Jury and the Judgment entered on the 30th day of April 1912, now come by H. H. Scoville, their attorney, and petition said Court for an order allowing said defendants to prosecute a writ of error to the Honorable the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and approved, and also that an order be made fixing the amount of security which the defendants shall give and furnish upon said writ of error, and that upon the giving of said security all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

And the petitioners will ever pray.

(Signed) H. H. SCOVILLE,
Attorney for Defendants.

San Juan, Porto Rico, May 2, 1912.

72 (Filed June 3, 1912.)

In the District Court of the United States for Porto Rico.

At Law. No. —.

CLEMENTE DIAZ Y QUIÑONEZ, Plaintiff,
versus
NANCY NEGRÓN LONGPRE, GUSTAVO MOURRAILLE, EMILIA MOURraille, Love Mourraille, Matilde Mourraille, Victor Mourraille, Defendants.

Ejectment & Mesne Profits.

Assignment of Errors.

Come now the defendants in the above entitled cause, and file the following Assignment of Errors upon which they will rely their prosecution of the writ of error in the above entitled cause.

I.

That the District Court of the United States for Porto Rico erred in overruling the demurrer interposed by the defendants and plaintiffs in error to the reformed complaint filed in said cause.

II.

That the Court erred in sustaining the demurrer interposed by plaintiff and defendant in error to the original answer filed in said cause by holding and deciding that the facts stated in said answer filed were not sufficient to constitute a defense to the cause of action in plaintiff's complaint contained.

73

III.

That the Court erred in sustaining the demurrer interposed by the plaintiff and defendant in error, to the answer of the defendants and plaintiffs in error, and by adjudging and deciding that the answer does not state facts sufficient to constitute a defense to the cause of action in the plaintiff's complaint contained.

IV.

That the Court erred in sustaining the first ground of demurrer interposed by the plaintiff and defendant in error to the amended answer of defendants and plaintiffs in error, and by adjudging and deciding that said amended answer filed on the — day of —— 1911, does not state facts sufficient to constitute a defence to the cause of action in the plaintiff's complaint contained.

V.

That the Court erred in sustaining the second ground of demurrer interposed by the plaintiff and defendant in error to the amended answer filed as aforesaid in said cause, and in deciding and adjudging that paragraphs III, IV, VI, VII, VIII, IX, X, XI, and XII of said amended answer are ambiguous, unintelligible and uncertain, and that the same are not such denials as are required by Sections 110 and 118 of the Code of Civil Procedure of Porto Rico.

VI.

That the Court erred in deciding and adjudging that it had jurisdiction in an action of ejectment to try the title to the land in question, and that the previous declaration of the nullity of
74 the inscribed title held by defendants and plaintiffs in error was not a prerequisite to such action.

VII.

That the Court erred in sustaining the third ground of the demurrer of plaintiffs and defendants in error to said amended complaint, and in holding that the fourth, fifth, sixth, and seventh

affirmative defences contained in said answer are ambiguous, and that the matters contained in said paragraphs of said answer are not a defence to this action.

VIII.

That the Court erred in deciding and adjudging that the second and third affirmative defences contained in said amended answer were insufficient and did not constitute a valid or legal defence, and that the order of the District Court of Humacao in approving the adjudication of the property in question to the predecessors in interest of the defendants and plaintiffs in error was null and void and of no legal effect, and that said Court was without jurisdiction to make such order.

IX.

That the Court erred in sustaining the demurrer to the fourth affirmative defence contained in said amended answer, and in holding that this action does not constitute collateral attack upon the judgment and order of the District Court of Humacao.

X.

That the Court erred in sustaining the demurrer to the fifth affirmative defence set up in said amended answer, and in deciding that the prescription alleged in said defence was not a sufficient defense.

75 XI.

That the Court erred in sustaining the demurrer to the sixth affirmative defence and in deciding and adjudging that said defence was insufficient.

XII.

That the Court erred in sustaining the demurrer to the seventh affirmative defence set up in said amended answer, and in deciding and adjudging that said defence was insufficient.

XIII.

That the Court erred in deciding and adjudging that paragraph one of the amended answer filed by the defendants and plaintiffs in error on the — day of April, 1912, was insufficient and did not constitute a valid defence, and in adjudging that the plaintiff and defendant in error and not his mother Doña Petra Quiñones was entitled to the rents and profits of the land in question and that the plaintiff could sue therefor.

XIV.

That the Court erred in deciding and adjudging that paragraph two of said amended answer filed on the — day of April, 1912, is insufficient, and that the same does not constitute a legal defence to this action.

XV.

That the Court erred in deciding and adjudging that paragraph three of the new matter contained in said amended complaint is
insufficient, and in not deciding and adjudging that the
76 plaintiff and defendant in error has no right or interest in
the usufruct of one-third of the farm in question, and that he had never at any time prior thereto had such right or interest.

XVI.

That the Court erred in deciding and adjudging that paragraph four of the new matter contained in said amended complaint does not constitute a good and sufficient defence, and in deciding and adjudging that the plaintiff and defendant in error was not a co-heir with his mother and that he had the right to sue for the possession thereof.

XVII.

That the Court erred in deciding and adjudging that paragraph five of said amended answer does not constitute a good and sufficient defence, and that the defendants and plaintiffs in error were not in possession of the property in good faith and that the plaintiff was entitled to recover the rents and profits of said farm.

XVIII.

That the Court erred in instructing the Jury peremptorily that the plaintiff had a right to the possession of the property described in the complaint which was the subject of the action, over the objection and exception of the defendants.

XIX.

That the Court erred in permitting testimony to be introduced
by the plaintiff as to the rents and profits of the farm in
77 question, or the usufruct thereof, and in overruling the objection of the defendants that the plaintiff was not entitled to the rents and profits or the usufruct thereof.

XX.

That the Court erred in permitting the plaintiff Carlos Benitez Santana to testify as to the profits that would have been derived from the land in question planted to cane from 1894 to 1900, and in overruling the objection of the defendants on the ground that said testimony was too speculative to be admissable.

XXI.

That the Court erred in allowing the witness Carlos Benitez Santana to answer the question "What is the value of an Arroba of cattle", and to give testimony as to the probable income that might have been derived from the farm in question had the same

been dedicated to the raising of cattle over the objection of the defendants that any testimony along that line was too speculative.

XXII.

That the Court erred in overruling the motion of the defendants at the close of the Plaintiff's testimony for peremptory instructions for a verdict in favor of the defendants on the ground that no defense had been presented from which the Jury could arrive at any definite conclusion as to the value of the rents and profits of the land in question.

XXIII.

That the Court erred in refusing to admit in evidence the document marked "Exhibit A" for the defendants, and in refusing to allow said witness to testify as to the amount collected for
78 the same property mentioned in said Exhibit A during the period from 1894 to the date of the trial of this cause.

XXIV.

That the Court erred in allowing counsel for plaintiff to submit to the Jury a statement showing calculations made by himself over the objection of the defendants.

XXV.

That the Court erred in refusing to give Instruction No. 1 asked by the defendants as follows:

"1st. The Jury is instructed that if from the testimony introduced it believes that the defendants have occupied the farm in question in good faith without interruption from the date that they took possession thereof to the date of the filing of this suit, without any knowledge of a defect in their title, then you should find that the plaintiff is not entitled to recover for the rents and profits of said farm prior to the date of the filing of the complaint herein."

XXVI.

That the Court erred in refusing to give Instruction No. 4 requested by the defendants, as follows:

"4th. The Jury is instructed that the plaintiff is only entitled to recover the rents and profits of the farm in question from the date upon which he arrived at his majority.

XXVII.

That the Court erred in refusing to give Instruction No. 5, requested by the defendants, as follows:

"V. The Jury is instructed that the evidence as to the probable production of the land sued for if the same had been planted
79 to cane or dedicated to the raising of cattle is of such a speculative character that it would be impossible to arrive at

any definite or accurate conclusion therefrom, and that the same should be wholly disregarded."

Wherefore, said defendants and plaintiffs in error pray that the judgment of the said court be reversed and such directions be given that full force and efficacy may inure to defendants by reason of the defenses set up in their amended answers filed in said suit.

(Signed) H. H. SCOVILLE,
Attorney for Defendants and Plaintiffs in Error.

80 (Filed June 3, 1912.)

In the District Court of the United States for Porto Rico.

At Law. No. —.

Ejectment and Mesne Profits.

CLEMENTE DIAZ Y QUIÑONEZ, Plaintiff,
versus
NANCY NEGRÓN LONGPRE, GUSTAVO MOURRAILLE, EMILIA MOURraille, Love Mourraille, Matilde Mourraille, Victor Mourraille, Defendants.

Order Allowing Writ of Error.

Upon motion of H. H. Scoville, Esq., attorney for the defendants in the above entitled cause, and upon filing a petition for writ of error and an assignment of errors, it is ordered that a writ of error be and is hereby allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of bond on said writ of error be, and hereby is fixed at Eighteen Thousand Dollars ($18,000.00).

[SEAL.] (Signed) PAUL CHARLTON, *Judge.*

81 Know all Men by these Presents, That we, Gustavo Mourraille, Nancy Nerón Longpré, Emilia Mourraille, Love Mourraille, Matilde Mourraille, and Victor Mourraille, as principals, and Don, Carlos Le Brun, y Don, Sixto Antonio Rivera, as sureties, are held and firmly bound unto Clemente Diaz y Quiñones, in the full and just sum of Eighteen Thousand Dollars ($18,000.00) to be paid to the said Clemente Diaz y Quiñones, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this Seventh day of June, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a session of the District Court of the United States for Porto Rico, in a suit depending in said Court, between Clemente Diaz y Quiñones as Plaintiff and Nancy Nerón Longpré, Gustavo Mourraille, Emilia Mourraille, Love Mourraille, Matilde

Mourraille, and Victor Mourraille, as defendants, a judgment was rendered against the said Nancy *Nancy* Nerón Longpré, Gustavo Mourraille, Emilia Mourraille, Love Mourraille, Matilde Mourraille, and Victor Mourraille, and the said defendants having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said Clemente Diaz y Quiñones, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Nancy Nerón Longpré, Gustavo Mourraille, Emilia Mourraille, Love Mourraille, Matilde Mourraille, and Victor Mourraille, shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) G. MOURRAILLE. [SEAL.]
(Signed) C. LE BURN. [SEAL.]
(Signed) S. ANTONIO RIVERA. [SEAL.]

Sealed and delivered in presence of:

(Signed) JOSÉ ACARÓN CORREA,
Iargt. O. J.
(Signed) A. G. MELLADO.

Approved by:

(Signed) PAUL CHARLTON,
Judge of the District Court of the United States for Porto Rico.

We, Don, Carlos Le Brun and Sixto Antonio Rivera, being duly sworn, each for himself and neither for the other, deposes and says that he has real property situated in the Island of Porto Rico exce-ding the value of eighteen thousand dollars ($18,000) over and above all his just debts and legal liabilities.

(Signed) C. LE BRUN.
(Signed) S. ANTONIO RIVERA.

Subscribed and sworn to before me by the above-named Don, Carlos Le Brun, and Don, Sixto Antonio Rivera, to me personaly known.

Vieques, Porto Rico, 7 day of June, 1912.

(Signed) F. MARCHAN SICARDO,
Municipal Judge.

82 (Journal Entry July 27, 1912.)

In the District Court of the United States for Porto Rico.

Law. 794.

CLEMENTE DIAZ Y QUIÑONES
vs.
NANCY NEGRÓN LONGPRE et al.

Upon motion of H. H. Scoville, attorney for the defendants herein, he is granted an extension of thirty (30) days from this date, within which to perfect the Appeal in the above entitled cause.

Journal Entry July 27, 1912.

Now comes H. H. Scoville, attorney for the defendants herein, and presents to the Court for its approval, the Bill of Exceptions in the above entitled cause, and the Court having considered the same, approves it and orders same filed of record.

83 In the District Court of the United States for Porto Rico,

Sitting at San Juan.

Law. No. 794.

CLEMENTE DIAZ Y QUIÑONEZ, Plaintiff,
vs.
NANCY NERÓN LONGPRÉ et al., Defendants.

Bill of Exceptions.

Be it remembered, that on the 26th day of April, 1912, the above-entitled cause came on *fro* trial before the above Court and a jury duly impaneled, the Honorable Paul Charlton presiding, Clemente Diaz y Quiñonez, hereinafter styled the plaintiff, appearing by Joseph Anderson, Jr., and Damian Monserrat, Jr., and Nancy Nerón Longpré and others, hereinafter styled the defendants, appearing by H. H. Scoville, and the following proceedings were had, to wit:

The plaintiff admits that the defendants are entitled to the amount of their counter-claim, 2,630 pesos, money current at the date of the transfer of the real estate sued for herein which should be determined by the jury, in gold, plus interest at six per cent. from February 1, 1894 to the present date. Plaintiff also admits that he is entitled to only two-thirds of what the jury may find as the value of the rents and profits of the property in question, and that the other third would belong to the mother of the plaintiff in usufruct.

84 Thereupon the plaintiff offered in evidence "Exhibit A." Said document was placed in evidence, and is as follows:

EXHIBIT "A" for PLAINTIFF.

Number Twenty-eight.

Assignment of Credit.

Parties hereto:
Don Ramón Aboy Benitez, Doña Petra Quiñones, Don Santos Diaz, Don Victor Mourraille.

Witnesses:
Don Ricardo Romero, and Don Eulogio Cruz y Velez.

In the town and Island of Viequez, on the 20th of June of 1893, before me, Don Leandro Lara Tomé, Notary of this locality, district of Humacao, and of the Illustrious Territorial College of this province of San Juan, Puerto Rico, resident of this town:

Appear:

Of one part: Don Ramón Aboy Benitez, thirty years of age, married, property owner and neighbor of this town.

Of the other part: Doña Petra Quiñones Rodriguez, 26 years of age, widow, devoted to the labors peculiar to her sex, and

Don Santos Diaz y Gonzales, 27 years of age, married, property owner.

And of the other part, Don Victor Mourraille y Bometerre of sixty-four years of age, married, sugar planter, all residents of this town, as shown by their personal certificates (cedulas) of the sixth class that of the second and third party, and of the fourth class that of the latter, stubs numbers 1, 147, 79 and one respectively; issued by the Administration of Rents and Customs, of this town within the present fiscal year.

The parties hereto, who are to me personally known, appear at this act, the first in his own right, the second as widow in first nuptials of Don Clemente Diaz y Gonzales, the third as defender of the minor infant Clemente Diaz y Quiñones, and the fourth and last as active partner and manager of the agricultural and cattle raising partnership V. Mourraille & Martineau, as shown by the proper instruments duly attested to at the end of this original deed, to prove their representation, and for the purpose of inserting them in any copies thereof which may be issued hereafter. And the parties hereto being in my judgment legally qualified to
85 execute this deed of acknowledgement of debts and assignment of credit, they, to that effect, set forth.

1. Don Ramón Aboy Benites states: that the Succession of Don Clemente Diaz y Gonzales, owes him the sum of Two Thousand Nine Hundred and Thirty-four Pesos and Seventy-one cents, as appears from the documents which he exhibits, and which literally read as follows:

'Don Manuel Nicolas Berrios y Rodriguez, definite Secretary of the Municipal Court of Vieques, hereby certifies: That in the book of

conciliatory acts kept by this municipal Court, there is one under number 7 which literally copies reads as follows: In Isabel Segunda of Vieques, on the 5th day of the month of April, 1892, sitting in open court the Municipal Judge Don David Alvarez y Rodriguez, and I, the Secretary being present, appeared, of one part Don Ramón Aboy Benitez of this vicinity, property owner and of legal age, as shown by his personal certificate of the current fiscal year, which he exhibited and I returned to him, accompanied by his attorney in fact Don Teodoro Vidal, and of the other, Doña Petra Quiñones, widow of Don Clemente Diaz also of this vicinity, and of legal age, which is likewise proven by her certificate of residence which she produced and I returned to her, accompanied by her representative Don Enrique Urrutia; and it being the day and hour set for this act, the plaintiff Mr. Aboy stated: That he sues the Succession of Don Clemente Diaz, that is, his widow, so that he be paid the sum of three thousand and seventy-seven pesos thirty-two cents current money, which it is owed to him, as the result of an account acknowledged by the deceased Mr. Diaz, on the 23rd of March, 1890; which account amounted to two thousand and twenty-eight pesos ninety-four cents, and for which amount he gave him a promissory note which fell due on the 31st of December of last year ninety-one; and of another account, which on the 31st of last March he presented to the lady widow present, for sums and effects supplied for the funeral, payment of taxes and other private debts contracted by the late Mr. Diaz referred to, and for cash and goods supplied to the said widow present. To which she replied: That she acknowledges the debts claimed from her, to wit, that of two thousand twenty-eight pesos ninety-four cents, created by her late husband Don Clemente Diaz for which he executed a promissory note in favor of Mr. Aboy, due the 31st of December of last year; and that of the one thousand thirty-eight pesos thirty-eight cents, resulting from moneys and goods taken by her late husband, payment of taxes which he owed to the Municipality, and some private debts which he owed and were paid by the plaintiff; other amounts borrowed for the funeral and the wake of the said deceased; and still others for the support of deponent and her little child; stating, that at this moment she has no funds with which to pay the account which she lawfully owes, and she begs the plaintiff to grant her an extension of time up to March of next year 1893, when the lease of the farm Destino, with Messrs. V. Mourraille and Martineau will expire, until which date she will have no money available; calling the attention of Mr. Aboy,
86 that in that account which he claims there are six hundred and thirty-two pesos twenty-nine cents current money which represent one-half the promissory note executed on March 15th, 1889, for the sum of eight hundred and forty-four pesos five cents, by the husband of deponent in favor of Mr. Aboy, and that one-half of that which the deceased executed to Don José C. Bajandas, under the same date, for four hundred and twenty pesos fifty-three cents, belong to Don Santos Diaz, because if the husband of the relator subscribed said documents — was due to the fact that the said Don Santos was a minor at that time, which fact is known to Don Au-

gusto Nere Delerme, who was the representative of the said Don Santos Diaz in the settlement of accounts which was had with the plaintiff Mr. Aboy on March 15th, 1889; wherefore the relator requests that the said sum of six hundred and thirty-two pesos twenty-nine cents be eliminated from the amount claimed, it being more easy for Mr. Aboy to collect the same from the debtor Don Santos Diaz; and finally she also requests the Judge, that she be allowed one year of grace for the payment, without interests. The plaintiff Mr. Aboy, answered that he was willing to eliminate from the account the six hundred and thirty-two pesos twenty-nine cents, so as to make the proper claim against Don Santos Diaz; to deduct to the debtor Mrs. Quiñones, two hundred pesos, and to wait for the payment of the balance amounting to Two Thousand Two Hundred and Thirty-five Pesos Three Cents, until the 31st of March of next year, 1893, without interests, but upon condition that he be granted a first mortgage upon one-half of the Farm Destino, belonging to the Succession of the said Don Clemente Diaz; the defendant further replied that she accepts the offers made by Mr. Aboy, binding herself to execute the first mortgage upon that part of the farm Destino, in favor of the creditor Don Ramón Aboy Benitez, for the sum of Two Thousand Two Hundred and Thirty-five Pesos and Three cents; setting forth that this amount includes the promissory note which the late husband of the relator executed to Mr. Aboy, to his order, on the 24th of March 1890, for Two Thousand and Twenty-eight Pesos Ninety-four Cents; and that in case that Mr. Aboy should not return this document or promissory note at the time of executing said mortgage, the same shall then and there stand null and void. At this point the Judge asked the representatives of the parties hereto whether they had any objection or statement to make, to which they answered that they had nothing absolutely to say, inasmuch as the parties themselves had reconciled and were satisfied. Immediately thereafter the authority referred to ordered the closing of this conciliatory proceedings and that copies thereof be issued to each of the parties at their request, subscribing their names to it, after the signature of the Judge, before me of which I certify. There is the seal of the Court.—D. Alvarez.—R. Abou Benitez.—Petra Quiñones.—F. Vidal.—E. Urrutia.—Manuel N. Berrios.—The foregoing copy concurs with the original of its contents to which I refer in so far as necessary; and at the request of Don Ramón Aboy
87 Benitez, I issue the present O. K. by the Municipal Judge on this sheet of paper stamped 10.—N. O. 016,359 in Vieques, on the 5th of April, 1892.—There is a seal which reads—Municipal Court of Vieques.—O. K. D. Alvarez.—Rubricated Manuel N. Berrios.—There is a draft stamp for $415.—We, the undersigned jointly and severally, acknowledged that we owe, and promise to pay on the month of March of next year 1893, unto Messrs. V. Mourraille and Martineau or to their order, the sum of four hundred and fifteen pesos, currency, which they supplied us for grubbing and cleaning out farm called Destino, situated in the barrio of Puerto Ferre, which we have leased to said gentlemen, paying interest at the rate of one per cent monthly on the loan; to the faithful per-

formance of which we pledge especially the year lease when the present document becomes due, as well as any and all property now belonging or which may hereafter belong to us, renouncing to all laws, privileges and rights which may help us to hinder the payment; and in contracting this obligation we declare that we possess our personal certificate issued by the local authority.—Vieques, August 20th, 1889. Clement Diaz.—Rubricated.—Santos Díaz.—Rubricated.—Witness: José Ramos. Rubricated.—Witness—Manuel Benitez Santana—rubricated.—There is a draft stamp for $200.—I hereby acknowledge that I owe and shall pay unto Messrs. V. Mourraille & Martineau, on the 25th of July, of the year 1892, or before, if possible, the sum of Two Hundred pesos current money, which said gentlemen supplied me in sounding cash, which I received to my entire satisfaction, paying interest at the rate of one and a half per cent per month, on the amounts; to the faithful performance of which I bind all property now belonging or which may hereafter belong to me, and particularly, that part of the lease of the farm Destino, of which I am the owner, and which I have leased to said Messrs. Mourraille & Martineau, renouncing my right to domicile, and to the laws which favor me in hindering the payment.

In Vieques, on the 25th of July 1889—Clemente Diaz—rubricated—Witness—J. D. Choudens—rubricated—Augusto N. Delerme—rubricated—Widow of Clemente Diaz—To Doctor Jasper.—Debit—for prescriptions in June and July 1886 and 1887 $4.00—For visits to her husband and consultations with Doctor Pou, in 1889: $15.00—For two visits at the farm "Destino" and two in town: $6.00—For visits in town and one certificate in 1889 to '91 and '92—$31=$56. Vieques July 12th, 1892—Approved—Petra Quiñones, widow of Diaz—rubricated—Received from Don Ramón Aboy the amount of this account.—C. Jaspard.—C. Jaspar.—It is rubricated.—On the back of the receipts for four hundred and fifteen pesos and two hundred, respectively, there is an indorsement which literally reads as follows: Pay to the order of Don Ramón Aboy the half concerning Don Clemente Diaz, value understood.—Vieques October 16th, 1893.—V. Mourraille and Martineau.—rubricated. (Here translation in Spanish of the above indorsement which appears in French in the deed.) Translation of the second: Pay to the order of Don Ramón Aboy, value understood.—Vieques October 16th, 1892.—V. Mourraille y Martineau.—rubricated.

88 The preceding insertions are a true copy of their originals attached to the expediente now started for the partition of the inheritance of Don Clemente Diaz, which documents I return to their owners rubricated.

Mr. Aboy y Benites states: that from the promissory note of four hundred and fifteen pesos there is to be deducted the half which corresponds to the co-owner of the plantation Destino, Don Santos Diaz, and consequently there remain two hundred and seven pesos fifty cents as the debt of the late Don Clemente Diaz, besides the two hundred of the other promissory note; fifty-six pesos for medical assistance, and finally the acknowledgment of the debt as appears

from the conciliatory act, amounting to Two Thousand and Thirty-five pesos three cents; and in addition thereto, the interests stipulated in the private documents amounting to two hundred and thiry-six, eighteen cents, making a total of Two Thousand Nine Hundred and Thirty-four Pesos Seventy-one Cents, which is the total amount owed to Don Ramón Benitez, for al- items.

Doña Petra Quiñones, and Don Santos Diaz, each in their respective capacity herein, that is, the first as widow in first nuptials of Don Clemente Diaz, and as the legitimate mother of the minor infant Don Clemente Diaz Quiñones, and Don Santos as defender of said minor, the first, ratifies the acknowledgment of the debt of two thousand two hundred and thirty-five pesos and three cents, which her late husband owed to Don Ramón Aboy, as she acknowledged before the Municipal Court of this town, and as appears in the act of conciliation hereinbefore inserted; and the said lady Quiñones, together with Don Santos Diaz, further acknowledge that the debts which appear in the private documents also above inserted, are legitimate debts, and therefore they acknowledge in the proper legal manner that the Succession of the deceased Don Clemente Diaz y Gonzalez, is indebted to the said gentlemen Aboy the said sum of two thousand nine hundred and thirty-four pesos seventy-one cents for the items above and heretofore stated.

And Don Ramón Aboy Benitez having agreed to assign to the agricultural and cattle-raising partnership V. Mourraille & Martineau, two thousand six hundred and thirty pesos of the total credit, recognized in his favor, he proceeds to execute the present deed under the following stipulations:

First. Don Ramón Aboy Benitez, does hereby assign to the agricultural and cattle-raising partnership of Mourraille & Martineau residing at this town and represented by its active partner Don Victor Mourraille, the sum of two thousand six hundred and thirty pesos currency, the receipt whereof is acknowledged by Mr. Aboy, prior to this act from said partnership, which he affirms and ratifies after having been warned by me the notary that in view of such confession he is barred from taking any exception nor allege anything against the declaration which he makes of having received said sum, although it should be proven later that its delivery was not true in whole or in part.

Second. Don Victor Mourraille y Boneterre in the name and representation of the partnership V. Mourraille & Martineau solemnly accepts this section in the manner proposed by Don Ramón Aboy y Benitez, and both contracting parties declare by common
89 consent that the assignor partnership remains subrogated in all its rights and actions belonging to Mr. Benitez on the credit assigned, the assignor however being obliged to guaranty the title to the same and to answer for all obligations for which the same might be liable according to law.

Third. Doña Petra Quiñones and Don Santos Diaz, take notice of the assignment as recited in the preceding clauses, and solemnly bind themselves to pay just the same to the assignor than to the assignee the sums which they should appear to owe to one or the

other after the partition of the inheritance of the estate left by Don Clemente Diaz, upon his death, for the debts which he left pending.

In view of the above the parties hereto close this contract and of common accord designate this town as their legal domicile for any and all judicial proceedings which might arise thereunder.

I have warned the parties that they are bound to present a copy of this deed at the "Oficina Liquidadora" for the collection of the taxes charged for the transfer of property and real rights of this district within thirty days following the execution of this instrument because if through their failure to present it the taxes should remain unpaid, they will be liable to a fine of ten or twenty-five per cent on the amount of the liquidated tax, as the case may be, according to the provisions of the Regulations for the collection of the tax.

There being present at this act the parties hereto together with the subscribing witnesses Don Ricardo Romero and Don Eulogio Cruz y Velez, of this vicinity, and having read this deed to them after advising them that they had a right to read it by themselves, it is approved by the first and signed by the latter.

And I, the Notary, give faith as to my knowledge of the parties, their profession and residence, and of all what this public instrument contains.—V. Mourraille.—Petra Quiñones, widow of Diaz-Santos Diaz.—R. Aboy Benitez.—Ricardo Romero.—Eulogio Cruz. —Rubricated—Leandro Lara.—It is rubricated.

Proceedings quoted: Don Carmelo Martinez y Rivas, Scrivener of the Court of First Instance, of the town of Humacao. Certifies: That in the expediente instituted by Doña Petra Quiñones y Rodriguez asking for the appointment of a guardian (defensor) for her son Don Clemente Diaz y Quiñones, the following order was issued:

In the town of Hamacao, on the 30th of September, 1892, Mr. Romulo Villahermosa y Borao, Judge of First Instance thereof, and its district, in view of this expediente and of the preceding obligation and acceptance, said: That he ought to confer and did confer upon Don Santos Diaz y Gonzalez, resident of Vieques, the appointment of guardian of his nephew Don Clemente Diaz y Quiñones, the legitimate child of his brother germain Don Clemente Diaz y Gonzalez, to represent him in Court and out of court, and in the inventories, valuation, partition and adjudication of the relict estate left at the death of his brother germain Don Clemente Diaz y Gonzalez, giving him the powers required by law, not only for said purpose, but also
for all matters in which his interests might be in opposition
90 to those of his mother Doña Petra Quiñones y Rodriguez, and
could not be represented by her according to law, and for all that he is thus appointed through the authority and judicial decree of his honor, directing that he be furnished with as many copies of this order as he may request, And it is so ordered. Signed by said Judge before me, of which I certify.—Romulo Villahermosa.—Before me.—Carmelo Martinez y Rivas.—And for delivery to the guardian Don Santos Diaz y Gonzalez, who has requested it, I issue the present under my signature in the town of Humacao, on the 26th day of November 1892.—Carmelo Martinez y Rivas.—There is a

seal which reads.—Escribania de Actuaciones.—of C. Martinez Rivas. —Humacao Porto Rico.—Number seventy.—Extension of time of the Agricultural and Cattle-raising partnership V. Mourraille and Martineau. In the town and Island of Vieques, on the 10th of August 1887, before me, Don Leandro Lara Tome, Notary of the Illustrious Territorial Collect of this province of San Juan de Puerto Rica, a neighbor and resident of this town.—Appear.—Of one part: Don Victor Mourraille y Bonneterre, 53 years of age, married, sugar planter, and resident of this town, as shown by the personal certificate (cedula) of the 4th class which he exhibits, stub number three, issued by the Mayor of this Municipality under date of the 1st of July last past. And of the other: Don Victor Martineau y Boyard of sixty years of age, married, sugar planter and resident of this town, as shown by the personal certificate of the 4th class which he exhibits stub number two, issued by the local authority of this Island under date of July 1st, last. The parties hereto, to me personally known, have the legal capacity necessary for the execution of this deed of extension of the agricultural and cattle raising partnership which both have constituted, and to that effect they set forth: 1. That by public deed executed by the parties hereto before the Notary of Fajardo, Don José Felix Camuñas, under date of June 10th, 1882, they constituted a partnership for agricultural and raising cattle purposes under the firm name of V. Mourraille & Martineau, for the development of agriculture and for raising cattle and horses during a term of ten years beginning from the said day of June 10th, 1882, under which date the said deed of constitution of partnership was executed.—2nd. That the main purpose of said partnership being that for which it was constituted, that is, to contribute by all means within their reach, to the development of agriculture and industry concerning the manufacture of sugar, several of the partners have agreed to change the old steam engine for another of the modern type commonly known by the name of Central which modification is now under way, expecting to have it finished so as to use it in the grinding of its products during the next crop; and inasmuch as this innovation with which they expect to, obtain larger profits, has resulted also in larger expenditures, they have at the same time decided to extend the time of the partnership having in view if possible to perfect this new system, thereby reimbursing themselves of the expenses which they have been required to make, introducing to that end some modification in the said contract of partnership consisting in an increase of the capital of the same by the addition of another sugar plantation. And the parties hereto having
91 agreed to extend the time of the partnership for the reasons set forth in the second paragraph of this public instrument, they carry the same into effect through the present deed under the following stipulations: First. Don Victor Mourraille and Don Victor Martineau, have mutually agreed that the period of duration of the agricultural and cattle-raising partnership doing business in this place under the firm name of V. Mourraille & Martineau, which was constituted by both of the partners hereto, as appears from the said deed dated June 10th, 1882, is hereby extended for eight ad-

ditional years from the ten for which it was constituted, and therefore, instead of the partnership ending on the 10th of June, 1892, it will end the said day of June 10th, 1900, with the purpose of contributing to the development of the sugar industry, reforming if they so see fit the system of the machinery of the central and at the same time for obtaining within a longer period of time larger profits, as it is with that object that they have associated. Clause of the former contract which is maintained in force in this extension: Second. By the present contract they hereby establish on this date a singular partnership, for agricultural and raising cattle purposes, under the firm name of V. Mourraille y Martineau both partners being in charge of the management of the society and the use of the firm signature, but Don Victor Mourraille shall be specially in charge of the agricultural operations and of the work which the cattle might require, wherefore in compensation for his supervision he is hereby assigned for the period of time of this contract a yearly pension of two thousand six hundred pesos payable in monthly installments to be charged to the general expense account. Third. Of the Contract of Extension.—The parties hereto do hereby stipulate that the clauses of the deed of June 10th, 1882, constituting the agricultural and cattle raising partnership V. Mourraille and Martineau are to be held null and void whenever conflicting with those expressed in this public instrument and there shall remain in full force and effect those which are not in conflict with what has been herein agreed and covenanted.—There being present at this act the contracting parties, together with the subscribing witnesses, Don José Alba, and Don Eulogio G. Blanco, of this vicinity, and this deed having been read by me after advising the parties that they have a right to read it each by himself, the first lend their consent and sign together with the latter. I, the Notary, give faith as to my knowledge of the parties, their residence and occupation, and of all what this public instrument contains. At this stage the contracting parties stated that neither in the present deed, nor in the deed hereinbefore mentioned relative to the constitution of the partnership V. Mourraille & Martineau, no provision has been made, for the event of the death of any of the two partners, prior to the expiration of the partnership, and considering that it is to their interest to make such provision, they by mutual agreement have decided to add it to this document as follows: In the event that prior to the expiration of the time for which it has been constituted and extended the partnership V. Mourraille and Martineau, this is prior to the 10th of June of the year 1900, there should occur the death of the partner Don Victor Martineau, it is agreed between the parties that the said partnership shall continue its business in the same manner as
92 heretofore constituted, up to the termination of the time to which it has been extended, in consideration of the great confidence which Mr. Mourraille inspires to Mr. Martineau, as he has been for several years the manager of the estates which they jointly possess as well as the said partnership, and his administration has been highly satisfactory; but if it should happen that prior to the year 1900 the partner Don Victor Mourraille should die, the heirs

of said gentleman may at their discretion, dissolve or continue said partnership, as they deem best. This condition having been read by me to the parties hereto and to the witnesses mentioned, the first ratify its contents and sign with the latter, of all of which I give faith.—V. Mourraille.—V. Martineau.—José Alba.—Eulogio G. Blanco.—Rubricated.—Leandro Lara.—It is rubricated.—And at the request of the parties I issue, rubricate and sign this first copy on this day of its execution, on a sheet of paper of the first stamp and three of the eleventh, numbers 1831, 132,000,442,132,441,132,432—respectively which is a true copy of its original on file in the current protocol of this Notary, and having made an entry to that effect.

And at the request of the partnership V. Mourraille & Martineau, I sign, rubricate and issue this first copy on a sheet of paper of the second class, authorized to be used, and five of the 11th class numbers 850; and from 113,256 both inclusive, which is a true copy of its original placed on file in the current protocol of this Notary, having made an entry of this copy on this 30th day of June, 1893.—I give faith.

(Signed) LEANDRO LARA.

Presented on this day this document it will appear in the book of Liquidations under number 33.—Humacao July 22nd, 1893.

Messrs. V. Mourraille & Martineau have paid in accordance with the liquidation made and approved, at 50% under number 63 of the Tariff the sum of twelve pesos forty-nine cents official money on account of the above document, which amount was paid in the Custom House of this town as shown by receipt number 125 of the 19th inst. Humacao August 21st, 1893.

(Signed) FELICIANO, ETC.

Administration of Rents and Customs, of Humacao.

Receipt Corresponding to Warrant No. 135.

Number 125.

Budget for 1893-94.

Section 1. Chapter 1. Article 30.

The Administrator of Rents and Customs of Humacao.

Received from Messrs. Mourraille & Martineau, the sum of Twelve pesos forty-nine cents, which they owed to the State for Real rights. (Royal Dues.)

93 And of this receipt note must be taken at the Comptroller's office without which requisite it will be null and void. Humacao, August 19th, 1893.

LUIS, ETC.

For $12.49.

NOTED.—The Comptroller, Eduardo, etc. Entry made —. Entry made at the Treasury.

To the Auditor of the Local Administration of Rents and Customs of Humacao:

I certify that Messrs. Mourraille & Martineau have paid on this day at this office, the sum of Twelve pesos forty-nine cents for royal dues, — pesos — for interest and arrears and — and pesos — cents for fine all as per liquidation made by the "Liquidator del Impuesto" of this town, and therefore that I have issued him receipt No. 125 corresponding to — warrant — numbers 125.

In witness whereof, and in compliance with provisions in article 115 of the Regulations for Royal Dues I issue the present O. Kd. by the Administrator in Humacao, on the 19th of August, of 1893.

(Signed) EDUARDO, ETC.

O. K.
SHELLEY, *Administrator.*

The above is a correct translation.

F. FANO,
Interpreter & Translator U. S. Court.

PLAINTIFF'S EXHIBIT "B."

To the Registrar of Property of Humacao.

SIR: Damian Monserrat, Attorney for Clemente Diaz in certain civil proceedings followed before the Federal Court of this Island, respectfully requests:

That in order to prove certain facts before said Court, he needs a literal certified copy of the inscriptions first and second, en-
94 tered in that Registry referring to the following described property:

'Farm situated in the wards of Florida and Puerto Ferre, in the municipality of Vieques. It has an area of one hundred and thirty-one cuerdas, fifty hundredths, equivalent to fifty-seven hectares, five ares, and eighty-three centiares; bounded on the North by the plantation "Santa María" belonging to Don Carlos Le-Brun; on the South by lands of Ildefonso Leguillon and Eufrasio Colon; on the East by a property of Messrs. Mourraille y Martineau and on the West by a farm of Santos Diaz. This property appears inscribed in volume 7 of Vieques, property number 321, at folios 149 and following."

In virtue whereof I hereby request that said certificate be issued under the terms above stated.

San Juan, for Humacao, November 15th, 1911.

Respectfully,

DAMIAN MONSERRAT,
Lawyer for Clemente Diaz.

Presented on this 17th day of November, 1911.
The Registrar,

———.

I, Miguel Planellas Yañez, Registrar of Property of the city of Humacao, Puerto Rico, and its District.

Certify: That at folio 149 of volume 7 of Viegues, there appears the first inscription of property number 321 which literally copied reads as follows:

1.—Rural.—Farm situated in the wards of Florida and Puerto Ferre, in the municipality of Viegues. It has an area of one hundred and thirty-one cuerdas and fifty hundredths, of land, equivalent to fifty-seven hectares five acres, eighty-three centaires. It is bounded on the North by the plantation "Santa María"; On the South by Don Ildefonso Leguillon and Don Eufrasio Colon; on the East by Don Victor Mourraille, and on the West by Don Santos Diaz. This farm, as a part of the farm "Destino" is subject to a lien for One Thousand Tow Hundred Pesos in favor of Don Miguel Kearney, as appears from the entry made at folio 112, over, in book 11 of the old "anotaduria." Don Clemente and Don Santos Diaz y Gonzalez, acquired, undivided, share and share alike, the main property, the same having been adjudicated to them in payment, as appears from inscription number four made in that same volume at folio 48, property number 304. The said Don Santos Diaz y Gonzalez in his own right, and Doña Petra Quiñones y Rodriguez, both residents of Vieques, by herself, and in representation of her minor son Don Clemente Diaz Quiñones, heir of the former, with the purpose of making a partition of the estate of the principal, and not seeing fit to continue holding the same as community property, decided to make a new survey of the same, from which it resulted that it contained four hundred and forty-three cuerdas of land, equivalent to one hundred and seventy-four hectares, eleven ares, sixty-seven centaires, less acreage than that appearing in the Registry, the interested parties declaring that the difference observed was due to an error of calculation in making the first survey, wherefore they ratify the second survey, and each of them adjudicates to himself one-half of said property, there corresponding to Don Clemente Diaz y Gonzalez, and it being adjudicated to him in
95 payment of his joint interest a tract of one hundred and thirty-one cuerdas and fifty hundredths of land, which is the property of this number.

In virtue thereof, Don Clemente Diaz y Gonzalez inscribes in his favor the property of this number which is adjudicated to him in payment of his joint interest. All of the above appears from a first copy of an act of description and division of property executed in the town of Vieques, on the 1st of February ultimo, before the Notary of the same Don Leandro Lara, which document has been presented to this Registry at 10 o'clock on the 15th day of March last past, as per entry number 29, folio 8, over, volume 7 Journal. No royal dues have been paid because the document presented is not subject to that tax.

And the above being in conformity with the Registry, and with the document to which reference has been made, I sign the present

in Humacao, on April the 11th, 1894.—Fees number 7 of the tariff; 4 pesos fifty cents. Feliciano Piñol.—

I also certify: That the second inscription of said property entered at folio 150 of the same volume aforesaid, literally copied reads as follows:

Rural.—Tract of land situated in the wards of Florida and Puerto Ferre, its extension, description, boundaries and other circumstances appearing from the preceding inscription number one, equal to that made in the title now presented, with the difference that in the latter the plantation Santa María bounding the same on the North, is now owned by Don Carlos Le Brun, and that it is bounded on the East by lands of Messrs. Mourraille & Martineau. It is subject to a lien for One Thousand Two Hundred Pesos in favor of Don Miguel Kearney. Don Clemente Diaz y Gonzalez, an ex-resident of Vieques, acquired the property of this number by adjudication to him in part payment of a joint interest, made to him by Don Santos Diaz y Gonzales, as it appears from the said inscription number one, and he having died intestate in said town on April 30th, 1890, there existing no proof of his having executed a will, his widow, Doña Petra Quiñones y Rodriguez, resident of said town appeared before the Judge of First Instance of this District, asking that, after taking the legal steps provided for in Section 2nd, title 9, book second of the Code of Civil Procedure, her sole and legitimate son Don Clemente Diaz y Quiñones be declared heir intestate of the said Don Clemente Diaz y Gonzales. Having carried out the provisions contained in said section, and having first heard and secured the approval of the Fiscal, the Judge of First Instance of this District, Sr. Romulo Villahermosa, before the Scrivener of the Court Don Carmelo Martinez, issued an order under date of August 5th, 1892, declaring heir intestate of the late Don Clemente Diaz y Gonzalez, his legitimate son Don Clemente Diaz Quiñones without prejudice to a third party showing a better right.

Having made the partitions by common accord, by the widow and the attorney representing the minor, the Court issued an order dated December 27th, of the year last past approving the operations made and directing the same to be protocolized and that a copy thereof be issued and given to each of the interested parties showing their respective shares of the inheritance. Under said partition, the property of this number was adjudicated to the creditors
96 Messrs. V. Mourraille & Martineau in payment of a debt, placing a value of two thousand six hundred and thirty pesos on the same. In virtue thereof, Messrs. V. Mourraille & Martineau, inscribe in their favor the property of this number which has been adjudicated to them in payment.

All of the above appears from a first copy of a notarial act of protocolization of division of property executed in the town of Vieques on the first of February ultimo before the notary thereof Don Leandro Lara, which document has been presented at this Registry at 10 o'clock on the 15th of March last past, according to entry number 29 at folio 8 over, volume 7 of the Journal. Paid for Royal dues the sum of Thirty-nine pesos forty-five cents, official

money, as per receipt number 757, issued by the Custom House of this city on the 14th instant which remains on file in the docket of its class under number 147. And it being in accordance with the Registry and with the document of which I refer, I have hereunto set my hand in Humacao on April 18th, 1894.—Fees No. 7—of the Tariff. Six pesos fifty cents.—Piñol.

And finally I certify: That the two foregoing inscriptions appear cancelled by inscriptions third and fourth of the same property, at folios 151 and 152 of said volume 7 of Vieques, a literal copy of which follows, in accordance with article 292 of the Mortgage Law.

3.—Rural.—Tract of land in the wards of La Florida and Puerto Ferre, its area, description, boundaries and other circumstances appearing from the preceding inscription number one, which are alike to those shown on the title now presented, except that according to the latter the equivalence of its area is fifty-one hectares, sixty-eight ares, thirty-seven centiares. It is subject to a lien for twelve hundred *pæos* in favor of Don Miguel Kearney, according to the preceding inscriptions. It is valued at Two thousand seven hundred and thirty pesos. The agricultural partnership V. Mourraille & Martineau resident of Vieques, constituted by its partners Don Victor Mourraille and Don Victor Martineau y Boyard or Voyard, acquired this property by adjudication in payment of debts of the estate of Don Clemente Diaz, as appears from the preceding inscription; and Don Victor Martineau y Voyard, resident of Vieques, having died on the 20th of February, 1893, under a nuncupative will executed in the town of Isabel Segunda in the Island of Vieques on May 19th, 1891, before the Notary of this city Don Marcelino Estevanez, in which he declares as his property, that to which he may be entitled to in the partnership V. Mourraille & Martineau, aforesaid, and instituted his sole and universal heirs of all his estate, rights and actions, his two only surviving daughters, named Doña María Amelia and Doña María Luisa Noemi Martineau y Garnier in the amount of two-thirds of the capital of the testator, and the remaining third to his legitimate wife Doña Virginia Garnier, that is to say; one third of the capital to each of his daughters and to his wife: but that according to a deed of partition of property executed by said heirs in the town of Vieques, on July 8th ultimo, before the notary thereof, Don Lenadro Lara, the said Doña Virginia Garnier or María Catalina Virginia Garnier renounced to her share, accepting only what belonged to her as conjugal property and as dowry from the estate of the inheritance. And in order to be able to inscribe several deeds relating to various transactions which
97 took place between the said mother and daughters and Don Victor Mourraille, they have asked that there be inscribed in their favor, undivided, and by virtue of said will, the rights and acquisitions which the late Don Victor Martineau y Voyard had in the partnership V. Mourraille & Martineau, among which properties, there is included the property of this number. In virtue thereof, Doña María Catalina Virginia Garnier and her daughters, Doña María Amelia and Doña María Luisa Noemi Martineau y Voyard,

do hereby inscribe in their favor undivided, the interest or rights which Victor Martineau had in the property of this number without designating the proportional share belonging to each of them, for the reason that this has been the object of another transaction. Under the same title there are comprised seven other properties which appear inscribed where the attached marginal note indicates. All of the above appear: from the certificate of death of the testator Don Victor Martineau, issued in Vieques by the Municipal Judge Don José Diaz Prado, before the Secretary Don Francisco Justiz on the 7th of February ultimo; from the first copies of the will of said gentleman, and from the deed of partition above mentioned, and from a deed of dissolution of the partnership V. Mourraille & Martineau, executed on May 31, ultimo, before the said notary Don Leandro Lara, wherein the property of said partnership is described, and from a petition signed by Don José C. Bajandas, on the 6th inst. as verbal mandatory for the widow Garnier, asking that it be inscribed undivided in favor of the heirs of Martineau by virtue of the will.

The presentation, payment of fees and other facts appear from the inscription number 17 at folio 137, of volume 5 of this same municipality property number 55 triplicate, to which I refer. Humacao, September 14th, 1894. Fees: No. 7 of the tariff, 5 pesos 85 cents. Piñol.

4.—Rural.—Tract of land without name, in the municipality of Vieques, its area, description, boundaries and other circumstances appearing from the foregoing inscriptions number 1 and 3, exactly alike to that made in the title now presented. It appears subject to a lien for One Thousand Two Hundred pesos in favor of Don Miguel Kearney, according to inscription number 2, above. Its value does not appear. It being embodied in that of the plantation "Campo Asilo." The agricultural partnership V. Mourraille & Martineau acquired this property by adjudication, in payment of debts of the estate of Don Clemente Diaz, as appears from the foregoing inscription number 2. and it having been agreed by the managing partner Don Victor Mourraille y Boneterre and by the heirs of the other partner Don Victor Martineau, to wit: his widow Doña María Catalina Virginia Garnier, Doña María Amelia Martineau de Bordesse, together with her husband Don Gabriel Bordesse, all residents of Vieques; and Doña María Luisa Noemi Martineau, resident of Paris, France, represented by her mandatary Madame Garnier, as her power of attorney granted her in Paris on the 15th of August last past, accompanied by, and with the consent of her husband Don Esteban Luis Bordesse, before the notary of said capital, Maitre Pablo Agustin Huiller, duly legalized and translated, inserted herein, to dissolve the partnership V. Mourraille & Martineau, the former in his capacity as managing partner of the said firm, and the
98 other three parties representing the legitimate heirs of their father Don Victor Martineau, as appear from the above inscription number three, and to distribute among themselves the assets of the same in payment of their respective shares in said partnership, they have adjudicated to Don Victor Mourraille y Bon-

eterre, the property of this number together with six other properties and an interest in another farm, which appear inscribed where the attached marginal note indicates. In virtue thereof, Don Victor Mourraille y Boneterre, inscribes in his favor the property of this number which has been adjudicated to him in payment of his partnership share and for the payment of debts.

All of the above appears from the first copy of a deed of dissolution of partnership executed in the town of Vieques on May 31, ultimo, before the notary thereof, Don Leandro Lara. The presentation, payment of fees, and other facts appear from inscription number 18 at folio 138 over, volume 5 of this same municipality. property number 55 triplicate, to which I refer.—Humacao, September 18th, 1894. Fees No. 7,—of the tariff; 5 pesos 85 cents. Piñol.

The foregoing transcripts are literal insertions from the entries existing in the volumes and folios cited at the beginning, to which I refer.

It so appears from the books of Inscriptions of this Registry of Property.

And at the request of Don Damian Monserrat, as attorney for Clemente Diaz, I issue the present in Humacao, on November 29th, 1911.

MIGUEL PLANELLAS,
Registrar of Property.

There have been cancelled internal revenue stamps to the value of $4.00 in accordance with Number 6 of the tariff. Humacao date ut supra.

The Registrar,

MIGUEL PLANELLAS.

The above is a correct translation.

F. FANO,
Interpreter & Translator U. S. Court.

99 Thereupon the plaintiff asked the direction of a verdict in regard to the possession of the land, and the Court instructed the Jury as follows:

"Gentlemen of the Jury, you are directed to return as a part of the verdict which you will render, and when you do render your verdict then as of this date that the plaintiff in this case has a right of possession to the property which is the subject of this action."

The defendants except to the giving of this instruction.

CARLOS BENITEZ SANTANA being called as a witness in behalf of the plaintiff, was duly sworn, and testified as follows:

Direct Examination: My name is Carlos Benitez Santana. I am a property-owner, and resident of Yabucoa, and my family lives in San Juan. I am a farmer, and have a large sugar-cane plantation in Yabucoa, which lands I have under lease. I have 1,400 acres of cane for grinding this year. I have had experience in sugar-cane

growing since I was thirteen years old, and I am now fifty-seven years of age. I have worked in cane-planting, although I have been manager of sugar plantations of raw sugar. I have also been manager of Central Mercedita, but have at all times been engaged in farming work. I have had experience in the raising of cattle. I have had my own cattle, and at the same time there have been cattle of the properties which I have managed. I have worked in the land of Vieques for some years, and I have also lived there for some years. My father was living there when I was a young man. I started to work when I was thirteen years old in my father's plantations. Afterwards I came to Porto Rico, and returned to Vieques as manager for the firm of Cintrón & Aboy, at the Central Arcadia. From this time when I left Vieques there has been a lapse of ten or twelve years. During the last ten years I have sometimes returned to Vieques, although I did not go exclusively on cane business, but I have visited Vieques on some occasions. I think I might be able to make an accurate calculation or estimate as to the quality of the land there and the amount of cane it produces. I suppose the one hundred and thirty-three cuerdas in dispute in the suit is the *pro*tion of the land of Clemente Diaz, father of plaintiff, which lies near the town. I am familiar with it. I know the property "Destino." I knew it many years ago. I know it by having passed there and having seen it, but in that particular part where the "Destino" lies I have never worked. I know the general character of all the lands in Vieques on account of my having lived for many years there, and being able to classify them. I could calculate an average of the production of cane on the estate "Destino" because in the cultivation of cane you cannot make an exact calculation. The average product of a plantation depends on the conditions and on many other circumstances which might arise. I have stated that I have not worked on that property, but that I have passed by there, and that I believe that I know it, owing to my knowledge of the lands of Vieques, so as to give an opinion based on an average calculation.

Question. Now state, if you please, what, in your opinion, the one hundred and thirty-three acres of land known as "Destino" would be worth per acre per year from 1894 to 1900.

Defendants object to the question, and to the introduction of any testimony as to the value of the rents and profits of the land in question from 1894 to the date of the beginning of this suit, on the ground set out in the answer, namely, that the rents and profits, or usufruct, of this estate belonged to the mother of the plaintiff, and not to the plaintiff, and that he has no right thereto, and has no right to recover the same, and that the defendants have been in possession of the property in question since February 1, 1894, in good faith, and with a proper title, and that even though a defect should exist in said title which would entitle plaintiff to recover the property, he would not be entitled to recover the rents and profits thereof.

The Court overruled the objection, and the defendants excepted.

Answer. During that time the lands were paid from three to four dollars per cuerda for pasturing purposes. I mean the money current at that time, and as a rule they had four pesos for pasture land per cuerda per year. As a rule they charged for cane lands eight pesos current money at that time.

From 1900 to 1906 the price of pasture land has varied from five to six dollars per cuerda in American currency, and the price if rented for cane would not have exceeded ten dollars. From 1906 to 1912, rented for pasture it might have produced between eight and nine dollars per cuerda. Rented for cane we have leases. I am going to make some explanation. Before they charged twelve or thirteen dollars, and from two years to date the lands for cane purposes are being paid, in the district where I am, fifteen,
102 eighteen, and twenty, and there are some persons who are paying up to twenty-two dollars per cuerda. I believe that, as an average, I might say in this time, fifteen dollars per cuerda. I am speaking in general terms, because there have been some years that I have been out of Vieques, but I consider that the lands of the "Destino" are virgin lands that have not been planted. They are lands of very good quality, and if I also take into consideration that in Vieques sometimes there are some droughts which damage the cane, likewise in the years that have plenty of rain the lands are fertile, and the cultivation at Vieques is much cheaper than at Porto Rico—at least with reference to the district in which I am working. This figure of fifteen dollars is based upon all these considerations, and also on the fluctuations which the prices have undergone between one year and another.

Question. Now, take the same land, and for the first period, from 1894 to 1900, tell us, if you can estimate, what would have been the profits of that land planted in cane, if planted by the owner—the net profits per acre per year.

The defendants object to the question on the ground that any estimate of profits in the manner indicated would be too speculative, which objection is overruled, and an exception noted.

Answer. That will require a calculation. During the time I was in Vieques, as a rule we had to pay per cuerda for new cane something in the neighborhood of forty or forty-five pesos per cuerda. The other crops did not cost more than fourteen or sixteen
103 pesos per cuerda. As an average production both as to the first planting and the retoños I believe that you could not fix a lower production than 450 quintals per cuerda, because this is the average which, as a rule, all we farmers obtain. That would be the average that each acre would produce each year. The average value of the average production of 450 quintals will depend upon the percentage which the Central pays for the cane. In the district where I live there is a scale which marks to the Colonos 5%, 5½%, and 6%, but I consider that there being 130 cuerdas which this property contains, and the whole area being planted in cane, should be entitled to receive 5½%. I am unable to make the calculation by memory. This figure of 450 quintals per acre applies to the whole

period from 1894 to 1912. The change of prices has nothing to do with the production of the land. The cane yields much more from the first planting and care and cultivation which it receives. The general average obtained is 450 quintals per cuerda.

I cannot calculate the average price of sugar during this period because the prices have ranged a good deal. I cannot make a definite calculation because you have to have all the sugar quotations before you, but I consider, making a reasonable estimate, I might arrive at say $3.50. Of course there might be other people—merchants and dealers in sugar—who might be able to give better information with reference to this average. I understand that
104 the average price of cultivation would be the same for eighteen years—forty-five pesos or dollars for the first planting and from fourteen to sixteen dollars for the second and third crop. For the last two or three years we have had to pay more.

It has been estimated that you can keep one head of cattle on each cuerda of land, and I consider that each head should weigh an average of three-fourths of twenty-five pounds, because there are some lands which are very good pasture, and they give, as a rule twenty-five pounds or more, and others produce less. I mean twenty-five pounds per month. The average is three-fourths of twenty-five pounds for each head.

Question. What is the value of an arroba of cattle?

The defendants object to any testimony in answer to this question on the ground that the same is too speculative to admit of proof sufficiently accurate on which to base a verdict. Said objection is overruled and an exception noted.

Answer. The price changes just the same as the price of sugar has changed. At the years which I have been asked about the price fluctuated from $2.25 to $2.50. We have had cattle at the price of four dollars and up. As an average I think we might say that the cattle are worth somewhere about $2.75 or $3.00. I calculate that the average might range between $2.75 and $3.00, because in order to be able to answer affirmatively there would be required to give general data of the prices for the whole number of years. I
105 think the average for the last eighteen years has been from $2.75 to $3.00 per arroba. I desire to state that the difference from the gold standard to the Mexican and Provincial money which we had, I might say that it did not affect it in the least, because the Mexican money represented to us in Porto Rico the same value of the dollar.

There would be nine arrobas for each head of cattle for each year, bearing in mind that in Vieques the cattle gain more than in Porto Rico because of the pasture in that locality, and the salt waters are more apt for the better thriving cattle. The cost of raising 133 head of cattle on 133 acres of land, following the custom which they had there of keeping the cattle within an inclosure of wire and maya fences, just changing them from one inclosure to another, I think at the most two peons would be required, who might earn fifteen or twenty dollars a month, and that would be sufficient not only to

attend to the cattle but also for the repairing of the wire fences, and to keep the cattle within the confines of the inclosures. This would cost, more or less, $360 per year. Sometimes you have to spend during every year for cutting the grass in the pasture, which, if done properly, should not cost more than fifty or seventy-five cents per cuerda per year. The fences on 133 cuerdas of land, I would have to have some time to think over. The price for sticks or posts fluctuates between five and ten cents, according to the quality of the wood. A cuerda might require, of good sticks, between thirty and thirty-five posts, and I consider that to stretch three wires—
106 which costs, or used to cost per roll $2.75—one roll is sufficient for one cuerda. Once it is fenced it will take years before you will need to make any repairs or changes in the posts. You can calculate fifty posts of good wood in Vieques for the yearly repair of fences for the 133 cuerdas. I cannot go so far as to the milk from the cows, for they either drink it, or make cheese with it, or sell it.

At nine arrobas per year, worth $3.00 as an average, you would get at least $27.00 a year, gross, per cuerda. The expenses, as I have stated, are the wages of two men. I can't figure out the average cost per acre by memory. You can add up the items and you have the total. The net averare income from an acre in pasture with cattle would be whatever you get from the figures.

It would be easier to give the cost of oxen for planting ninety cuerdas of this land than to state the amount of oxen that woule be required for planting, because there are some times when you are preparing the ground that you are planting that you need a great number of oxen. Afterwards, when the cane is planted, and it is only under cultivation, then you need very few cattle; when the cutting begins, you will then require the oxen again. It is easier to answer what it would cost, or what the work of the cattle is worth than to answer the number that would be required.

To give the cost per acre for the planting of sugar-cane, I will have to start at the beginning. We have the custom in Vieques, when the land is virgin, not to plough it up, and you plant the cane just as the ground is—crude. In this case you will need the oxen, necessarily, to get the seed there, because the planting is, as we say, "estaca," and in that case each acre of cane will require as many acres
107 of seed as the farmer thinks will be proper. The cost for oxen to plough the ground in Vieques is different. When you plough it costs a certain sum of money; and when you don't plough it doesn't. If one half the land is ploughed and the balance is not ploughed, I might estimate that an acre would cost five dollars. The cutting of the cane I might estimate that in order to haul it to the switch where it is to be delivered, you might spend twelve dollars per cuerda for oxen, taking as an average a regular distance. About two-thirds of the present farm could be planted in cane if you had but 133 acres with the best practical results, and one-third should be left to keep the cattle which you need.

Cross-examination: I have never seen any canes planted on the hacienda "Destino." The nearest place to it I have seen, because

I have already stated there have been some years that I have not been in Vieques, is the plantation "Campo Asilo" belonging to Mr. Mourraille, and on the other side the "Santa María" of Monsieur Le Brun. I cannot give any positive information as to the prdouction of canes on the "Santa María" and the "Campo Asilo," but I have seen in the plantation "Campo Asilo" very good canes when I have passed by there to visit some friends in that plantation, and I consider it one of the best lands in Vieques. I have seen, with reference to "Santa Maria" all classes—some good parts, other fair,—because there were some lands very rugged and stony also. In the hacienda "Destino" you have everything. Some *pro*tions are high land, and others *law* land, and level land—you have got it of all descriptions. I cannot state positively whether there are many hills, because I went only to Destino by passing over the road, and
108 having entered into it sometimes only. I suppose there must be some stone on the land, but from what I have seen I have considered it good land. The fact that you find some stone does not imply either goodness or badness of the ground, because there are some stony lands that are very good and give very good results; whereas there are some lands that are stony and at the same time the land has been washed and is clay-ey. I cannot be sure whether there was any washed land on the "Destino." Those that I know I have considered good; I cannot say whether there are other- or not, because I have not been able to look over the whole area of the property.

I have gone over the road leading to the plantation "Campo Asilo" to meet some of my friends on one portion of that property, and when I was young I used to live in Vieques, and during those frolics of the young men I used to *to* there too.

I think you could keep 130 head of cattle on 131 acres, all right, and the more so in Vieques, because while I was manager for Cintrón and Aboy I have kept, not for a great period of time, a higher number of head than one head per cuerda under minor conditions.

Mr. Mourraille was aware of the fact that we have a custom in Vieques to divide properties there in inclosures, so as to keep the cattle within one inclosure. When the pasture there is very scarce we shift them to the other inclosure which has rested. There have been some droughts in Vieques since 1894, but not so heavy as have been before. I do not think there have been any droughts since then on account of which cattle have died, but it may be so, as I have been absent from Vieques for the past ten years.

109 The cost of cutting and hauling of the cane from an acre of land from the hacienda "Destino" depends upon the distance at which the switch is located, but taking the regular distance—a fair distance—we used to pay between forty and forty-five cents a ton. We are now paying 75¢ and 80¢ in the district where I am working. I cannot state the number of kilometers from the hacienda "Destino" to Central "Puerto Real". It is some distance. I believe the Central "Santa María" is, perhaps, nearer. The fact that the Central be or be not a long distance is not important, because the centrals, as a rule, when the contracts for planting cane are entered into, bind themselves to lay tracks to the nearest point

possible, so that the engine should reach that place, and having a locomotive, there are no distances. If it is profitable to the Central to build it, it will build and provide road for ninety acres of cane, because it might be that it had lands in that vicinity which it might be able to plant, but a colono who has to plant canes in the "Destino" and haul canes in cars to the Central "Esperanza" would not do it, because then it would be a losing enterprise. I cannot testify whether the Central "Santa María" or Puerto Real" have ever put in desvios or switches for colonos. From 1894 to 1900 there existed in Vieques the sugar-mills "Arcadia" of which I was manager, "Santa María", and "Esperanza". I am not sure whether the "Campo Asilo" did, or did not, grind. There was the "Playa Grande" I am not sure whether the plantation "Resolución" ground or whether it had been torn down. The "Playa Grande" did not buy any cane, because she planted her own cane. The "Esperanza" also I believe ground its own cane, although later both have engaged colonos, under the same conditions the "Santa María" and the "Arcadia" which I am unable to say whether their cane belonged to them, but I believe they have colonos at this time. I cannot say at what price cane sold during those years, in case any was sold, but I can say that at the time the "Playa Grande" started to buy cane, they paid three pesos per ton for cane. With reference to the other Centrals I am unable to inform you, because I was not in the secrets of their business. They began to buy at three dollars a ton ten or twelve years back, I can't state the exact date,—it was prior to the American occupation. It was not three dollars but three pesos, the current money at that time. At the present time, speaking of the Central "Playa Grande" there are some colonos who are getting 6%, and others I do not know. I have already stated that I have been out of Vieques for ten years.

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In response to the question from a juror, witness states that in figuring the price of three dollars per arroba for cattle, there is no discount on the weight. That out of the gross weight of cattle, when referring to cows, as a rule 40% is paid for; if bulls, 42% or 43%, and for heifers it sometimes reaches 44%, and that this varies. If the cattle have been inclosed during the night that there is practically a discount of 60% when the animal is a female, when it is a male, no, but the price given is the net price. The arroba is net weight. The discount has been excluded.

JOSÉ EPIFANIO BENITEZ CASTAÑO, being called as a witness on behalf of the plaintiff testified as follows:

My name is José Epifanio Benitez Castaño, and I live in San Juan. I am a property owner. I am the Secretary of the Benitez Sugar Company, of Vieques, and a shareholder. I am forty years old, and have lived in Vieques thirty-five years. I have a farm called "Destino". It has been occupied by Mr. Mourraille for the last eighteen years. It is about two-and-a-half or three kilometers from town. The land is, in my opinion, very good for whatever purpose you want to use it. They are good for pasture, and they might be good for cane too. I think that

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they are fit for any purpose whatsoever. I was born in Vieques. In my opinion the rental value of that property per year from 1894 to 1900 would be between three and four pesos. The value of the same land rented for cane for the same period would be between seven and eight pesos. From 1900 to 1906 that land per acre per year rented for pasture would be worth six pesos, and for cane during that same period it is as much as twelve pesos. The first period is what we called the Mexican money, but from 1900 to 1906 is gold, current money from the American occupation to this date. From 1906 to 1912 I think the rental value for pasture would be $8.00, but for cane during that same period, $18.00. It would not be very difficult to calculate what that land would have produced if planted in cane during those same three periods. I might be able to make some calculation. I have a memorandum here. I believe that the first crop that we gather on this of newly planted cane, being virgin lands, we might calculate would give 500 quintals per cuerda. I am referring to the first cutting of the newly planted canes. I think the second crop from retoños might produce 350 quintals, and the third crop between 200 and
112 300 quintals. We have a custom when the ground becomes tired in Vieques to allow it to rest for a while. We leave it for a couple of years resting. The length of time it requires to get tired depends upon the quality of the land. In Vieques they at times take more than one crop of cane and two crops of retoños before the land gets tired. There are canes in Vieques which have been standing for ten or twelve years. The cane land in Vieques is rich. There is a great vegetable layer there. This land is virgin. I do not think it was ever planted with cane. We can calculate an average of $12.00 net on that land for this period of eighteen years,—$12.00 per acre—that is a net average. That place is good for cattle. I have been on the property. We have always had cattle raising there. I canot say that I have any direct experience, but it is easy to make calculations in that regard. We have had cattle raising for the last eighteen or twenty years.

I think the price of sugar at present is something around $3.90 in New York. That price has a discount of 22 cents. I cannot tell what the average price of sugar has been since the change of money. I would have to make a *cla*culation about the lowest price it has been during the last ten years. The prices have ranged a great deal. I do not remember from what price to what price. It has not gone down to three dollars. I think that sales have been made at $3.25, but I do not believe it has been lower than that.

Cross-examination: My calculation that the property would have produced $12.00 an acre per year planted to sugar-cane for the last eighteen years, has been based on the basis that the
113 property had been planted during the whole period of time. There is also the exchange of money. I have included everything, taking into account the provincial money which we had before. It might be possible, have been possible, to have cultivated during those whole eighteen years because it is virgin land. It is good land. I have never seen any cane planted on it. I think

I have seen cane planted alongside of it. I have seen cane in that neighborhood. I have never planted any canes in that neighborhood.

Taking a farm of 133 acres for the purpose of cultivation, I think it would have been possible to plant it all if you had gotten some person who would have furnished you the money or by mortgaging the property. We cultivate in Vieques with bulls. It is necessary to have pasture. I think it would be necessary to leave one-third of the property for pasture. If I had no other land upon which to keep oxen, I could not plant to exceed two-thirds of the 131 acres to cane. My calculation of $12.00 an acre was based on oxen belonging to the owner of the land. In Vieques a couple of cuerdas is sufficient to keep one ox or bull. I believe it would require about sixty yokes of oxen to plant and cultivate and do all the work about the cultivation of two-thirds of 133 acres of cane. The value of that many yokes of oxen varies.

There were five or six sugar-mills in Vieques in 1904. I do not remember their names, but I know at that time there were five or six sugar-mills, which sugar-mills moved by steam and moved by oxen. I do not know whether they bought sugar-cane or not. They started buying cane about six or seven years ago of the colonos. To plant sugar-cane to sell to the sugar-mills from 1894 up to five or six years ago I think it would have been sub-
114 ject to his expenses and his manner of living. I think that he would have been able to sell canes. We have been buying canes up to four and five years ago at $3.00 per ton. We are not buying now. We bought at that price for two or three years. I have already said six years ago, now I say nine years ago—three and the six which I mentioned before make nine. I do not know whether the other mills in Vieques bought canes from 1894 to 1900 or not. It takes two hours to go from the hacienda "Destino" to our sugar-mill. From eight or nine years ago to this date I think it has been possible to take sugar-cane from the hacienda "Destino" to our sugar-mill. Some years before perhaps not. I do not know of any place leasing at $18.00 per acre from 1906 to 1912. I based my opinion that the rental value was $18.00 per cuerda or acre on the fact that the people are getting more enthusiastic every day about the planting of cane, to the extent that you cannot find a place today to keep a bull or an ox. I do not know of any leases or rents of sugar-cane lands in Vieques at $18.00 an acre. I do not know of any leases or rental of pasture land at $8.00 an acre from 1906 to 1912. My brothers have a property in Campaña and they refuse to keep cattle at $2.00 per ahead.

Redirect examination: I said *ti* took sixty yokes of bulls for the cultivation of ninety acres of cane. That would be 120 head of bulls for ninety acres. I mean to say, cultivate them, and keep them, and do the hauling, and all the work connected therewith, and not merely for the actual cultivation work. For the actual cultivation I believe that one-half of that number would be sufficient, or ninety head. It would be sisty head. The working
115 days there are, as a rule, five days a week. They would work five days a week the whole year unless you put them

at some other work. I mean during the planting time. The number of months of planting depends upon the number of men you engage for that work. I have stated that the sixty yoke of oxen to cultivate ninety acres were for the purpose of all work in connection with the cultivation *ot* be done there, to haul the cane and to take it to the place of delivery, etc. I believe that the cultivation could be done with sixty oxen. These oxen would be working if you keep them for the purpose of cultivation or planting, during the planting season. The crops, as a rule, end in the month of June or July, and then you want to start and plant with more vigor. You might be planting six months at different times.

MANUEL VIEVES, being called as a witness in behalf of the plaintiff testified as follows:

My name is Manuel Nieves, and I am a resident of San Juan. I went to Vieques in 1904 and was there for eight years, not to the present time. T*ow* years ago I left the island. I was there from 1904 to 1910. While in Vieques I was a preacher, and before that I became a merchant I had a dry-goods store there. I know the finca "Destino" in Vieques, and the part of 133 acres which Mr. Mourraille has been occupying. It is very good land.

The defendants move to strike the answer, on the ground that the witness is not qualified as an expert, which motion is sustained.

MODESTO RIOS ORNO, being called as a witness on behalf
116 of the plaintiff, testified as follows:

My name is Modesto Rios Orno, and I live in Santurce, San Juan. I lived in Vieques eleven years, from 1901 to the end of 1911. While in Vieques I became acquainted with the rental values of land by reference, by hearsay, and by documents. I was Secretary of the Municipal Court, afterwards Justice of the Peace, and afterwards Secretary and Municipal Accountant of the Municipality, and finally Collector of Internal Revenue.

Question. In either of these two capacities mentioned or as official of the Court did you become familiar with the land values in Vieques?

Defendants object to the question on the ground that the witness is not qualified, and the objection is sustained.

Thereupon the plaintiff announces that he rests his case.

Thereupon the defendants present the following motion:

"Now come the defendants in the above-entitled cause and move the Court for the direction of a verdict in favor of the defendants for the reason that no testimony has been introduced from which the Jury can arrive at any definite conclusion as to the value of the rents and profits of the land sued for."

The motion is overruled, and an exception noted.

RAMÓN ABOY BENITEZ, being called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

My name is Ramón Aboy Benitez, and I live in San Juan. I am fifty years of age, and am a merchant. I have been engaged in the sugar business, in financing sugar enterprises. I own
117 sugar-cane land in cultivation, and I have been owner of cane lands more or less for twenty years. It is situated in Vieques. I have never actively engaged in the cultivation of sugar-cane. I am acquainted with the sugar-cane lands in the Island of Vieques. I know the hacienda "Destino". I knew Clemente Diaz Gonzalez in his lifetime, and knew this farm at the time of his death. I am acquainted with the rental value of cane land in the Island of Vieques from 1894 down to the present date. I acquired this information by being the owner of a mill and by having purchased sugar-cane. I have had persons in charge of cultivation of my lands. The lands of the estate "Destino" might be good cane lands, and I believe they are the best there. They are good lands. I have not examined these lands particularly. I am speaking by analogy, by similar lands, by comparison. The rental value of that land, or similar land in Vieques, from 1894 to 1900 would have been between three and four pesos, according to the situation, the location, of the lands,—whether they are nearer or further from the town. The hacienda "Destino" is, I think, about two or three kilometers—three kilometers. From 1894 to 1900, during those first years, I am unable to state what those lands would be worth for sugar-cane, because each of those plantations had more lands than they required, their own lands, and there was no demand for lands. The price I have fixed of three and four pesos per cuerda is based upon the use of that land for pasture. An owner of land in Vieques at that time, who had 130 acres, if he had been in the neighborhood of a sugar-mill might have found a sale for his cane. The hacienda "Destino" was near the sugar-mill of Mr. Mourraille which has now been abondoned. Colonos were not needed at that time in Vieques. It might have been that
118 somebody might have needed them. There were six or seven mills in Vieques at that time. I don't know whether they made any contracts with Colonos for cane during that epoch, but so far as I am concerned I did not make any. That condition existed down to a couple of years after the American occupation.

Leases of land in Vieques from the American occupation down to 1908 have been made at the rate of $6.00 an acre; from 1908 to 1909-'10, $8.00; and after that date, two years ago—nearly three years,—people have got crazy about lands, and they have even gone as far as to pay $14.00, and I have heard that they have offered up to $20.00, but as to that I cannot testify. I am speaking of lands for the purpose of planting sugar-cane. Pasture is so scarce now that we are going to be compelled soon to pay more for pasture than for cane, because we are already in that situation. I think that this year if I could rent some land for pasture I would pay a good price for it. I am speaking of good cane lands—first-class cane lands. The value of these lands from 1900 to 1908 for cane, according to

comparisons which have been made, were at the rate of $6.00 for cane purposes; for pasture purposes it was $4.00 or $5.00.

I have never leased or rented any part of the hacienda "Destino". When Mr. Diaz owned it I had it under my management. At that time the general price in Vieques for good land was twenty-five pesos. At the time I had charge of the "Destino" it had four hundred and odd cuerdas. The part of the hacienda "Destino" which has been in possession of Mr. Mourraille for the last sixteen years is not all level, it is broken land. There are hills,
119 higher hills, sloping land, rugged land, and good land. There are sierra son that land, more or less. I think there are better cane lands in the Island of Vieques than the hacienda "Destino". There may be some land better. I think the difference between the part of the hacienda "Destino" in possession of Mr. Mourraille as compared with the rest of the hacienda is but little different, and that the difference is insignificant.

My attention has always been devoted to financial matters, and for the superintendency and the cultivation until four years ago my general manager was the gentleman who testified here this morning, and from four years ago, and up to this date I have had a partner, and whatever I wanted to know I should have to inquire from him. Up to eight years ago the gentleman who testified this morning carried the account of that plantation; since that time my partner.

If a man owned 131 acres of sugar-cane land, and had no other lands he would, of necessity, leave some land for the pasture of his cattle unless he could lease land in the neighborhood. I think that he ought to leave available one-fourth. I repeat that the man who has testified has individually planted the cane.

Cross-examination: The price of sugar now is $3.98½ in the States. Here it is 22¢ less. Last year I think it had an average of about $3.60, about $3.50 here. I do not remember what it was the year before. I might be able to secure the data, but I have not got it here. I think the average price has been, more or less, in the last twelve years, $3.25. I think that more or less the same thing in pesos, 3.25, would be the average price of sugar from 1894 to 1900. The highest price that sugar has
120 reached since 1900 was more than $5.00 in the States. That was an exceptional year, and the price got in a certain moment to that price and then decreased again, but the average here surely did not exceed $3.75. These are data which I furnish in good faith by memory. I do not have any report which shows the price during the last twelve years, but I think it woule be easy for you to get it. These data might be furnished by a firm like Fritze, Lundt & Company, a dealer in sugar, but that would cause work, because they have not taken the care to keep track of it. I think that by memory, in good faith, I might state the price has been $3.25 for about twenty years. Now, twenty years ago there were two years that we sold at $2.25 and $2.50—and as an average of $2.50. This was a long time ago. $3.25 would be the average four or five years before the American occupation and from 1895 in silver, when we had silver, and when we had a gold standard, gold.

When I stated that land had rented in Vieques at four and five Dollars, that was the current price,—not the lowest or the highest,—and depended on the circumstances and necessity of the man who had to lease and the lessor.

GUSTAVO MOURRAILLE, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

My name is Gustavo Mourraille. I am 41 years of age, a resident of Vieques, and my occupation is sugar-planting, and I am the owner of Property. I am a defendant in this case.

I have been in Vieques for twenty-one years, and have been in the sugar business that long. My father, and afterwards
121 the defendants, were in possession of the farm described in the complaint in this case. I have known the farm since I was a boy. I do not remember the date upon which my father purchased it, but have been in charge of it since his death. I am acquainted with sugar lands in the Island of Vieques. The 130 acres that belonged to Santos Diaz was broken land with many hills. There is very little level land there—almost nine, and it is considered in that locality as second-class land. It has never been planted to cane. Our sugar factory was the nearest to it. I have to make an explanation, that it was the nearest because we had two Centrals. Now the Santa María is the nearest. Monsieur Le Brun is the owner of the Santa María. The roads from this property, as a rule, are very bad, and almost impassable. To the town and to our properties there are naturally cross-roads which have never been built or fixed. I have planted sugar-cane personally, as foreman or mayordomo for eight or ten years. This tract of land can be planted to sugar-cane, but the profits would be very little. I know the land, and the quality of lands, and what they are able to produce, and also the cost attending the cultivation of these lands. The only railroad that passes by that place is my own, and it is about 2½ k'lometers from the property. There was no road between said property and our railroad. It would cost a great deal to build such a road. Some part of the land between is level land, and the other is broken land. You would have to make cuts. This tract of land in 1894 would have sold for from $20.00 to $25.00 per cuerda,—Mexican pesos—that was the current money at that time.

Cross-examination: I am not familiar with the land of Porto Rico. I have never worked there. What I know about the
122 value of lands on the Island proper, is by hearsay, because I neither purchased nor have worked them here. I cannot say whether lands in Vieques are generally considered better than those in Porto Rico or not. I have heard that the Vieques lands are good when it rains, as compared with those of Porto Rico. I do not know the value of Vieques cattle-lands in comparison with cattle-lands of Porto Rico. I don't know what an acre of land costs in Porto Rico for cattle purposes. I know what it is worth in Vieques, but not in Porto Rico.

The number of tons of cane which land in Vieques will produce

depends. You have to classify it by cuerdas, and according to the years,—if it rains or whether you have a drouth; also whether it is first growth cane, or whether it is rattoons, and whether it is first cutting or second cutting of the rattoons. You would have to make an average on a certain number of cuerdas to find out the cost of first cutting, and the best year on our lands. As to the yield they will produce per acre in tons of cane, the average of 100 acres of cane during a good year, of first planting, on level land, you might calculate would produce thirty tons per acre. That is the maximum upon a cuerda of 100 cuerdas, because some cuerdas yield more than others. That was an average of 100 cuerdas of the best and first growth cane—new cane land.

The lands of Vieques as cattle lands depend upon the location of the land, because there are lands that are more liable to suffer from drouth than others. The best located lands in Vieques are good for cattle,—not very good—they are good because during a dry year pasture is scarce.

It takes an hour to go across in the steamer from Porto
123 Rico to Vieques, but I don't know the number of miles.

Whenever I have business I go from Vieques to San Juan or to the Island of Porto Rico I have never purchased, nor have I visited any cane property or pasture lands in Porto Rico. I have visited some Centrals, yes, but not the fields; I have passed by the fields on the roads, but I have not been in the fields. Whenever I have business to do I come to Porto Rico. I never come for pleasure. Sometimes I come three, or four, or five, or six times a month, according to the necessities of my business. Sometimes I come three, and sometimes four times, and sometimes I stay away for three months. I know about the value of cane and pasture lands in Porto Rico by hearsay, but I have not seen it myself. Nobody can say that I have visited the properties in Porto Rico.

CARLOS LE BRUN being called as a witness in behalf of the defendants was duly sworn and testified as follows:

My name is Carlos Le Brun, I reside in Vieques, am 52 years of age, and my occupation is sugar-cane planter and cattle raiser. I have been engaged in these two businesses in Vieques for about thirty years. My sugar plantation is names "Santa María." I have been planting sugar-cane during all these thirty years. I am acquainted with the lands of the hacienda "Destino," because they adjoin my lands. I calculate that they are of the same class as my lands—that is, second-class lands, because there are no level or vege lands there, it is sloping land or broken land.

No, I don't think I have ever seen any cane planted on the lands of "Destino." There is one road from the Hacienda Destino to the sugar-mills which leads from the town to the plantation of Mr. Mourraille, which is in bad condition. To plant that land to sugar-cane, having to do the hauling or transportation, it would not yield much profit, owing to the fact that only about forty cuerdas
124 could be planted. The balance would have to be left for keeping the oxen for hauling the canes out of the property.

Forty-eight or fifty oxen would be required to haul the cane from forty cuerdas of that farm. In my opinion, a farm of 130 acres, under those conditions, planted to cane,—making a rough calculation—would yield $15.00 per cuerda on cane, more or less. I made a rough calculation only. I meant by that, net profit for the cane, without taking into account the value of the oxen, etc. A calculation which would calculate the cost of the oxen, would cut it down to $12.00. I am basing my calculations on the price of this date; more or less,—the present price. That price would not apply from 1900 to this date. It would apply to the last four years. There wer- four sugar-mills in Vieques from 1894 to 1900—the plantation Playa Grande, Esperanza, Arcadia, and the Santa María. They did not buy canes from 1894 to 1900. They did not have colonos at that time during the Spanish Government. Those 131 acres if dedicated to pasture, is second-class land. It is good for pasture. Dedicated to cattle, in Vieques, for oxen we require at least two acres for an ox, and for raising other cattle an acre and three-quarters. On a farm of 131 acres for the purpose of raising cattle you could keep, more or less, eighty head. This would be cows with their calves—probably being 20 to 25 cows, and you would calculate two calves for each cow, the ages of the calves being, a suckling calf, and one a year or more of age. The increase of the suckling calves depends upon the condition of the pasture. I calculate five or six arrobas (25 lbs. per arroba) for the first year—an average of five arrobas more or less, because a bull in order to gain 18 arrobas requires at least three years and a half. The cattle would be sold,—the oxen for working when they get to 17 or 18 arrobas, and for other purposes you sell them when they get to twelve arrobas. The heifers you sell when they are eighteen or twenty months old, and from twenty to twenty-two months old. The profit which one might reasonably expect to obtain per acre of land on each 130 acres of land of the class of the hacienda "Destino," dedicating it to the growing of stock, I can calculate. Calculating the value of the money and of the land, I might estimate it between eight and nine per cent.

I have sold sugar-cane in 1900. I sold from 2-1/4 to 3 pesos, but I don't remember the year. The cheapest has been 2-1/2 pesos Mexican money.

From 1894 to 1900 cows were worth in Vieques, per arroba, more or less, $1.75, and heifers from $2.00 to $2.25; bulls from $2.25 to $2.50 current money at that time, that is to say, Mexican. From now two years back it has been dearer. Before that from 1900 to 1912 you might calculate at $3.00 to $3.25 as an average.

Cross-examination: I have lived in Vieques thirty years. Before that I leved in Europe, in France. I am a citizen of France. I have in Vieques my sugar plantation which belongs to my family—it has 2,200 cuerdas—and privately I have 2,800 cuerdas. My estimate of the net profit on sugar-cane per cuerda, on land the quality of the land of the "Destino," from the standard of the colono, would be more or less $12.00 per cuerda,—more or less, taking into account the number of cuerdas that could be planted and the number that

would have to be reserved for cattle. Out of the whole business, you would make an average of $12.00 per cuerda, more or less. A thousand acres would produce $12,000, deducting the interest on
126 the value of the money for capital. The lands which are nearer to the town, of the quality of my lands, today might be worth from $70.00 to $80.00 per cuerda. For cane we have been assessed at between $60.00 and $70.00 per cuerda. All my cane lands are assessed at that. One thousand acres of land of the quality of "Destino" would yield between 500 and 600 head. I think it might produce $4,000 per year net, more or less.

I cannot testify as to the lands in Vieques compared with lands in Porto Rico at Yabucoa, because I do not know Yabucoa. I know Fajardo, but I have never seen the cultivation of that place. The lands of Vieques are fertile when it rains. I know that the lands of Vieques are similar, or resemble those of Arroyo and Guayama, but as to the productiveness, it depends upon the season of the year. Those on the southern side of Vieques would be considered about the same as those at Guayama; on the northern side, no. The larger portion of the lands in Vieques were used to a considerable extent, previous to the American occupation and during the war in Cuba, for the raising of cattle, and quantities of cattle were shipped to Cuba for one or two years. They have always raised a large number of cattle in Vieques. The lands of Vieques are considered very excellent for cattle.

Redirect examination: One thousand acres of land planted to sugar-cane, located like the hacienda "Destino" is today in regard to any sugar-mill, would be a particular case,—a special case—because it is distinct from all factories. My calculation that you would be able to net $12.00 an acre from it was on land where you could get out easily the cane. The benefit on 130 acres cannot be as much per acre as it would be on 1,000 acres.

127 Recross-examination: The farm "Destino is separated from my property by a hill.

The purchasing value of a peso during Spanish times was less than the purchasing value of a dollar now, because when the exchange of money was, it was exchanged at the rate of sixty cents for a dollar special money. At that time we had no gold here, you bought more things. I think the Spanish peso in Spanish times would buy the same meat as one dollar now.

LUIS AGUSTO BONET, being called as a witness, in behalf of the defendant, testified as follows:

My name is Luis Agusto Bonet. I reside in Vieques. I am forty years of age, and am a property owner. I was born in Vieques, and have been engaged in cane-growing ten or twelve years. I know the finca "Destino" and have known it about twenty years. I was born there. I know it in regard to the production of sugar-cane. It is second-class land. It is hilly land, broken land, rugged land. I know the part of the hacienda "Destino" which has been in the possession of Mr. Mourraille since 1894—the one that belonged to Clemente Diaz the father of Clemente Diaz. There were four hun-

dred odd cuerdas in the "Destino" who I first knew it. I am not very sure. I know that property, but I was never interested in ascertaining that. I know that part of the property which is today owned by Clemente Diaz—about 90 cuerdas—I think ninety and odd cuerdas, more or less. It is more or less the same land as that in possession of Mr. Mourraille as to character. There were no sugar-mills in Vieques up to 1894 which bought sugar-cane. I was a colono two or three years prior to the American occupation, of
128 Santa María, of a few cuerdas. There were no other colonos at that time that I know of. Sugar-cane was sold at that time at $2.75, or $3.00, $2.50. I mean the sugar. I received a certain per cent, and I myself sold my sugar. I received four per cent, delivering my cane at the Central, at the mill. The location of the hacienda "Destino" in regard to the Centrals at present operating in Vieques, it is a distance of five or six kilometers from the Santa María, and from that of Mr. Mourraille eight or nine kilometers; and with reference to the others, there is a great distance intervening. Under the conditions of the road it is not practicable to plant that property to sugar-cane and haul the cane to any of the various sugar-mills existing on the Island.

I know something of cattle raising. I have had experience in it since I was twenty-six years old. You need two cuerdas a head for oxen; for medium cattle generally an acre and three-quarters. A farm of 130 acres would give, if devoted to the raising of cattle,—a farm of the same quality as the "Destino"—I think you might get six or seven per cent. upon the capital invested in cattle, after deducting all the expenses. Cattle will increase every year up to sixteen or eighteen arrobas, five or five and a half arrobas per year, taking one year with another, and from twenty to twenty-one arrobas an average of four arrobas, because when they get to sixteen they increase not so easily—they do not fatten so much.

Cross-examination: My property is three kilometers from Mr. Le Brun's Central. My lands are first-class lands—much better than those of Monsieur Le Brun, and easier to work. The great majority is level land. They are assessed at $100 for taxing purposes as first-class land. As a colono, the net profit on all my property per year in cane, would be $15.00 or $16.00 per cuerda after deducting all expenses.

129 In speaking of cattle producing, five or five and a half arrobas per head each year. I am speaking from the time that they are born, in good pasture, up to the time they reach sixteen or eighteen arrobas. A cow will give a calf at three years or two years and a half. The increase is in the calf, because a cow loses when it has a calf, and if it gains one or two arrobas it will remain there. I am only referring to what the cattle gain in a year—what a head of cattle is liable to gain since the time it was born. If I devote myself to cattle raising, it is precisely the calf that will yield the benefit, because the cow remains stationary.

Redirect examination: I know Eleuterio Ortiz. He has had possession of a part of the "Destino for four or five years I think—the part that belongs to Clemente Diaz. I think there — ninety cuerdas, more or less in that part.

The witness AGUSTO NERE was called and sworn on behalf of the defendants, but it being admitted that the witness would testify to substantially the same facts as testified to by the witness Le Brun and Bonet, this witness was excluded and an exception noted.

Thereupon the testimony is closed.

The foregoing Bill of Exceptions is approved and made a part of the record in this cause this 27th day of July, 1912.

(Signed) PAUL CHARLTON, *Judge.*

130 (Filed August 16, 1912.)

In the District Court of the United States for Porto Rico.

Law. No. 794.

CLEMENTE DIAZ Y QUIÑONES, Plaintiff,
vs.
NANCY NEGRON LONGPRE et al., Defendants.

To Rafael Guillermety, Esq., Clerk of said Court:

Please prepare transcript of the record in the above-entitled cause, to be transmitted to the Supreme Court of the United States, pursuant to the writ of error sued out herein by the defendants Nancy Negrón Longpré et al., including in said transcript all those parts of the record and proceedings specified below, showing the date of filing of each, together with such other portions as may be properly indicated by the attorneys for the plaintiff Clemente Diaz y Quiñones:

1. Reformed complaint, filed April 4, 1911.
2. Demurrer to Reformed Complaint, filed September 9, 1911.
3. Answer filed October 24, 1911.
4. Demurrer to Answer filed November 7, 1911.
5. Amended Answer, filed November 28, 1911.
6. Demurrer to amended Answer, filed December 1, 1911.
7. Translation of Exhibit "A" for Plaintiff, filed December 21, 1911.
8. Translation of Exhibit "B" for Plaintiff, filed December 21, 1911.

131 9. Journal Entry, April 15, 1912.
10. Opinion of the Court, filed April 15, 1912.
11. Amended Answer, filed April 22, 1912.
12. Journal Entry of April 23, 1912.
13. Amendment to Amended Answer, filed April 25, 1912.
14. Journal Entry April 25, 1912.
15. Journal Entry April 29, 1912.
16. Journal Entry April 30, 1912.
17. Petition for Writ of Error, filed June 3, 1912.
18. Assignment of Errors, filed June 3, 1912.
19. Order allowing Writ of Error, filed June 3, 1912.

20. Supersedeas Bond.
21. Journal Entry July 27, 1912, and Bill of Exceptions.
22. Copy of this Præcipe.
23. Copy of any other præcipe or præcipes filed by Attorneys for Plaintiff, with parts of the record indicated herein.

(Signed) H. H. SCOVILLE,
Attorney for Defendants.

We, the undersigned, counsel for the plaintiff in the above entitled action, hereby acknowledge receipt of the foregoing præcipe.
Dated this 16th day of August, 1912.

(Signed) DAMIAN MONSERRAT,
Attorneys for Plaintiff.

132 In the District Court of the United States for Porto Rico.

794. Law.

CLEMENTE DIAZ Y QUIÑONES
vs.
NANCY NEGRON LONGPRE et al.

I, Rafael Guillermety, Clerk of the District Court of the United States for Porto Rico, de hereby certify that the foregoing typewritten pages numbered I to —, inclusive, *to be* a true and correct copy of certain proceedings in the above entitled cause, as called for by the præcipe filed by the counsel for the appellant, copy of which præcipe is hereto attached.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court this 20th, day of August, A. D. 1912.

[Seal United States District Court for the District of Porto Rico.]

RAFAEL GUILLERMETY, *Clerk.*

133 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Clemente Diaz y Quiñones, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, D. C., within sixty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for Porto Rico, wherein Nancy Nerón Longpré, Gustavo Mourraille, Emilia Mourraille, Love Mourraille, Matilde Mourraille, and Victor Mourraille are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment

in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Paul Charlton, Judge of the District Court of the United States for Porto Rico, this 3rd day of June, A. D. 1912.

PAUL CHARLTON,
District Judge.

Service of the within citation and receipt of copy thereof is admitted this 5th day of June, 1912.

JOSEPH ANDERSON, JR.,
Attorney for Defendant in Error.

134 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judge of the District Court of the United States for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you between Clemente Diaz y Quiñones, plaintiff, and Nancy Nerón Longpré, Gustavo Mourraille, Emilia Mourraille, Love Mourraille, Matilde Mourraille, and Victor Mourraille, defendants, a manifest error hath happened to the great prejudice and damage of said defendants Nancy Nerón Longpré, Gustavo Mourraille, Emilia Mourraille, Love Mourraille, Matilde Mourraille, and Victor Mourraille, as is said and appears by the petition herein.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so as to have the same at said Supreme Court in the city of Washington, D. C., within sixty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right,
and according to the laws and customs of the United States
135 should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 3rd day of June, in the year of our Lord one thousand nine hundred and twelve.

RAFAEL GUILLERMETY,
Clerk of the District Court of the United States for Porto Rico.

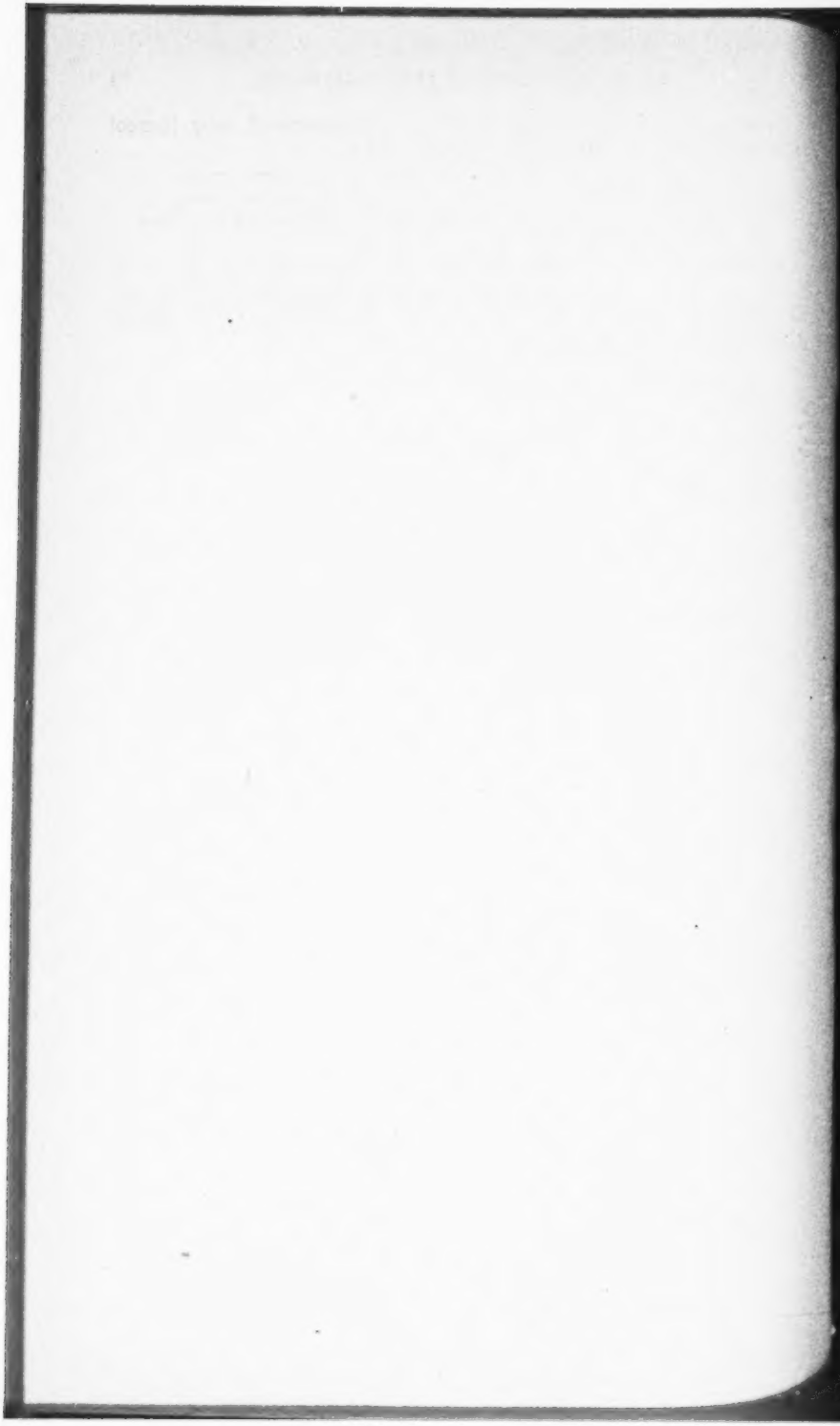
Allowed by

PAUL CHARLTON,
District Judge.

Service of the within writ of error, and receipt of copy thereof is hereby admitted this — day of June, 1912.

——— ———,
——— ———,
Attorneys for Defendant in Error.

Endorsed on cover: File No. 23,340. Porto Rico D. C. U. S. Term No. 334. Nancy Nerón Longpré, Gustavo Mourraille et al., plaintiffs in error, vs. Clemente Diaz y Quiñones. Filed August 27th, 1912. File No. 23,340.



STIPULATION AND ADDITIONAL TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 51.

NANCY NERON LONGPRE, GUSTAVO MOURRAILLE, ET AL., PLAINTIFFS IN ERROR,

vs.

CLEMENTE DIAZ Y QUISONES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

RECORD FILED AUGUST 27, 1913.

ADDITIONAL RECORD FILED MARCH 1, 1915.

(24,340)

(24,340)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 51.

NANCY NERÓN LONGPRÉ, GUSTAVO MOURRAILLE, ET AL., PLAINTIFFS IN ERROR,

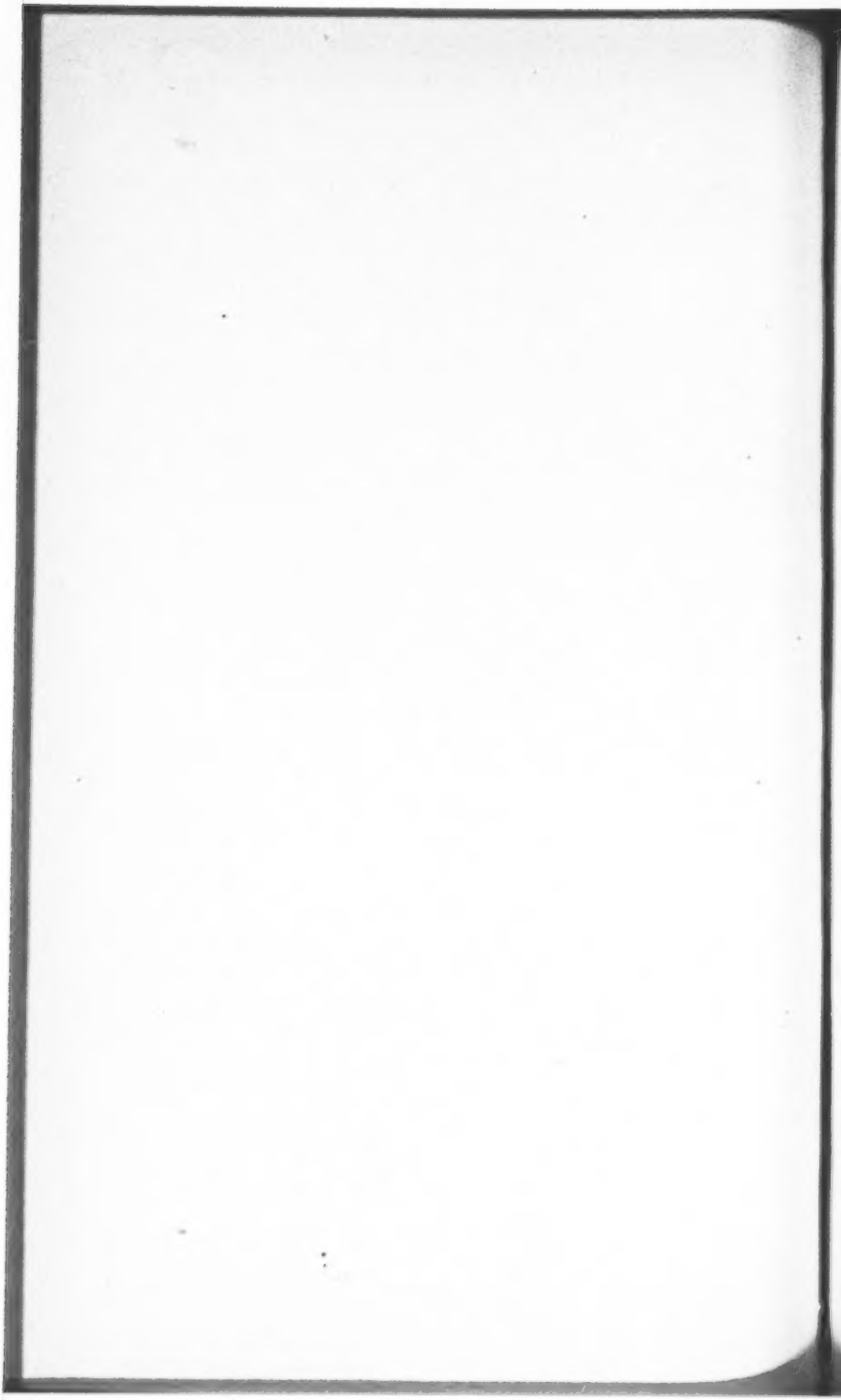
vs.

CLEMENTE DIAZ Y QUIÑONES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 3, 1915.



a In the Supreme Court of the United States, October Term, 1914.

No. 51.

NANCY NERÓN LONGPRÉ et al., Plaintiffs in Error,
vs.
CLEMENTE DIAZ Y GONZALEZ, Defendant in Error.

Stipulation.

Now come the parties in the above entitled cause by their respective attorneys and stipulate that the record herein be corrected as set out in the præcipe contained in the Supplemental Record presented herewith and that said Supplemental Record be filed as part of the record in this cause.

It is also stipulated that upon the filing of the printed copies of the briefs of the Plaintiffs in Error and Defendant in Error, which are mailed herewith, that this cause shall be restored to the calendar and submitted without argument when reached on the call.

San Juan, Porto Rico, February 19, 1915.

HECTOR H. SCOVILLE,
Attorney for Plaintiffs in Error.
JOSÉ R. H. SAVAGE,
Of Counsel.
JOSEPH ANDERSON, JR.,
DAMIAN MONSERRAT, JR.,
F. H. DEXTER,
Per A.
Attorneys for Defendant in Error.

b [Endorsed:] In the Supreme Court of the United States. Nancy Neron Longpre et al., Plaintiffs in Error, vs. Clemente Diaz y Gonzalez, Defendant in Error. No. 51. October term, 1914. Stipulation.

1 In the District Court of the United States for Porto Rico.

794. Law.

CLEMENTE DIAZ Y QUIÑONEZ
v.
NANCY NEGRON LONGPRE et al.

Certificate.

I, Antonio Aguayo, Clerk of the District Court of the United States for Porto Rico do hereby certify that in the above entitled case, now pending on appeal in the Supreme Court of the United

States at Washington, D. C., the so-called Exhibit "A" for Plaintiff, which appears on page 28 of the Original record and page 14 of the printed record, is erroneously entitled "Translation of Exhibit 'A' for Plaintiff, while it should be entitled Translation of Exhibit "A" for Defendants.

San Juan, P. R., Feb. 12, 1915.

[Seal United States District Court for the District of Porto Rico.]

ANTONIO AGUAYO,
Clerk U. S. Dist. Court for P. R.

2 In the District Court of the United States for Porto Rico.

794. Law.

CLEMENTE DIAZ Y QUIÑONEZ
v.
NANCY NEGRON LONGPRE et al.

Certificate.

I, Antonio Aguayo, Clerk of the District Court of the United States for Porto Rico do hereby certify that in the above entitled case, now pending on appeal in the Supreme Court of the United States at Washington, D. C., the so-called Exhibit "A" for Plaintiff, as it appears on page 86 of the Original record and page 47 of the printed record, is erroneously entitled Exhibit 'A' for Plaintiff, while it should be entitled Exhibit "A" for Defendants.

San Juan, P. R., February 12, 1915.

[Seal United States District Court for the District of Porto Rico.]

ANTONIO AGUAYO,
Clerk U. S. Dist. Court for P. R.

3 EXHIBIT "AA."

(Filed December 20th, 1911.)

Decree.

Exhibit —.

In the town of Humacao, on the 5th day of August 1892, Don Romulo Villahermosa, Judge of First Instance of this town and its district, being duly advised in the premises, it appearing that Don Clemente Diaz y Gonzalez, a native of the town of La Ceiba, and married to Doña Petra Luzunaris y Berrios, residing in the Island of Vieques, died in said place on the 30th of April 1890, without having executed a will, there remaining from said matrimony a son

named Clemente Diaz y Quiñones, who has survived him, without any other legitimate descendants.

Second.—It appearing that his said widow, Doña Petra Quiñones y Rodriguez, came before this Court on the 28th day of June ultimo, setting forth that her said husband had died intestate, and that her said son was his sole legitimate heir, exhibiting certificates from the Church and from the Civil Registry, proving her relationship with the deceased and also as to his death, wherefore she asked the Court that her said son be declared heir intestate of the said deceased.

Third.—It appearing, that upon investigation by the Prosecuting Attorney, as to the facts involved, the latter filed his report which is attached to the record, in favor of said declaration.

First.—Considering, that intestate succession corresponds in the first place to his legitimate children, according to article 931 of the Civil Code.

Second.—Considering that in pursuance to this provision
4 of the law the inheritance of Don Clemente Diaz y Gonzalez, corresponds to his only son Clemente Diaz y Quiñones, for having died without executing a will, the declaration of heirship intestate, in favor of the said son is hereby granted as requested.

In view of article 980 and following of the law of Civil Procedure, the Court, before me the Scrivener, holds, that it should declare and does hereby declare heir intestate of Don Clemente Diaz y Gonzalez, his legitimate son Don Clemente Diaz y Quiñones, directing that a certified copy of this declaration be issued to his legitimate representative for the exercise of his rights in the premises. And it is so ordered.

ROMULO VILLAHERMOSA,
Judge of First Instance.

Before me,
CARMELO MARTINEZ RIVAS.

I, Jesus L. Pereyó, Secretary of the District Court for the Judicial District of Humacao, do hereby Certify: That the foregoing is a true and correct copy of the proceedings had in this Court, filed therein and under my custody, by Doña Petra Quiñones, widow of Diaz, and at the request of a party in interest, I issue the present under my signature and the seal of this Court in Humacao November 17th, 1901.

JESUS L. PEREYO,
Secretary District Court.
J. M. PEREZ,
Deputy Clerk & Record Keeper.

A correct Translation.
(Signed) F. FANO,
Official Interpreter & Translator.

5 (EXHIBIT A FOR PLAINTIFF.)

(Filed November 29th, 1911.)

In the District Court of the United States for Porto Rico.

794, Law.

CLEMENTE DIAZ
vs.
NANCY NERON LONGPRE et al.

No. 3.

Deed Containing the Record of Partitions of Clemente Diaz y Gonzalez, Executed by Petra Quiñones y Rodriguez in Favor ——— ———.

1st of February 1894.

Copy issued by Antonio de Aldrey y Montolio, Notary of Humacao, Porto Rico.

No. Three.

Record of Partition.

Parties executing the instrument: Petra Quiñones y Rodriguez.
Witnesses: Adolfo de la Parte Colombier, Ramon Huerto Puertolas.

6 In the town and island of Vieques, on the 1st of February of the year 1894, before me, Leandro Lara Tomé, notary public of this town in the district of Humacao, and member of the Illustrious Association of Notaries Public of this Province of San Juan de Puerto Rico, and a resident of this town, there appears,

Petra Quiñones y Rodriguez, twenty seven years of age, a widow, property owner and resident of this town, as appears from the personal tax certificate (cedula personal) of the sixth class which is exhibited by her and stub No. 213, issued by the local bureau of revenues and customs of this town during the present fiscal year.

The party appearing herein whom I know and whom I consider, according to my judgment, in possession of the necessary legal qualifications for executing this deed containing the record of the partitions, and for that purpose, states:

That, as the widow of Clemente Díaz y Gonzalez who was her first husband, and as the legitimate mother of the infant minor, Clemente Díaz y Quiñones, and in behalf of the latter on account of his having been declared the sole abintestate heir of his deceased father, by virtue of the order made under date of the 5th of August

1892 by Rómulo Villahermosa y Bora, judge of the first instance of the city of Humacao and its district, before the scriveneer of the same city, Carmelo Martínez y Rivas, and in the presence of Santos Díaz y Gonzalez, guardian of said minor appointed as such by the aforesaid judge before the above mentioned scriveneer by
an order dated the 30th of September of the year 1892, they
7 appointed by common consent Augusto Nere Delerme as
accountant for the purpose of making the partition of the estate left at the death of the principal; and the aforesaid interested parties appeared in the capacity above indicated before the judge of first instance of the city of Humacao, presenting to him the partitions that had been extrajudicially made and requesting his approval, inasmuch as the inventory, appraisement, partition and adjudication of the estate left at the death of Clemente Díaz y González had been carried into effect with the consent of the coparticipants and to the satisfaction of the creditors of the principal, as was shown and had been ratified in the deed presented to that effect. After the legal requisites had been complied with, Isidoro Soto Nussa, acting judge of first instance of this district of Humacao and before the scriveneer of said district, Carmelo Martínez y Rivas, made an order approving said partition under date of the 27th of December 1893, directing that after the payment of the proper amount in legal stamped paper, the partitions be recorded in this notarial office, for the purpose of giving to the interested parties the certified copies of the inventories of their respective shares of the inheritance, in order that, within the term prescribed by law, they may be able to present the same for the purpose of making the payment of the taxes for Royal dues and conveyance of property, which taxes they must pay into the Royal Treasury; and besides for the purpose of producing the legal effect in accordance with the provisions of the laws now in force. For this purpose, and in
compliance with the order referred to, the party executing
8 the instrument, to wit, Petra Quiñones y Rodríguez, delivers
to me the record of the proceedings aforementioned, consisting of 16 folios to which the necessary stamped paper is annexed, and by virtue of the order of the judge of first instance, said record is filed under the number three of this Record, in this notarial office of Vieques, of which I am in charge at the present time, which fact is stated in the presence of the lady executing the instrument and of the instrumental witnesses, Adolfo de la Parte y Colombier and Ramón Huerto Puertolas, who are residents of this town, the former being informed of the obligation of the interested parties to present the respective inventories of their shares of the inheritance in the office of the collector of this district for the payment of the taxes within the terms fixed by the Regulations for the collection of the same, under the penalty of payment of the fines of ten or twenty-five per cent of the liquidated tax if they should fail to do so within the term prescribed.

They are likewise informed that they must present the same in the Registry of Property for their inscription therein, without which requisites they will not have any effect against a third party,

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nor will they be admitted in the courts, tribunals, councils and government offices, except in the two cases which are excepted from this rule as stated in the Mortgage Law now in force.

This instrument having been read by me at the request of the persons present, after I had informed all of them of the right they had to read it each for himself, it was approved and ratified
9 by the party first mentioned, who gave her consent to everything and signs together with the instrumental witnesses already mentioned in the paragraphs relating to their appearance.

And I, the notary, certify to the fact that I know the profession and residence of the lady executing this instrument and of the witnesses and the entire contents of this public instrument. Petra Quiñones, widow of Díaz. A. de la Parte. Ramón Huerto.—Signed:—Leandro Lara.

In the town and island of Vieques on the 24th of June 1893, I, Augusto Nere Delerme, by virtue of my appointment as accountant in charge of the partition of the estate left at the death of Clemente Díaz y González, which appointment was made by mutual and common agreement between his widow, Petra Quiñones y Rodríguez, and the guardian of the only and minor son of the principal, Santos Díaz y González, according to the declaration of abintestate heir of said Clemente, in favor of his aforesaid son, Clemente Díaz y Quiñones, in view of the order made by the judge of first instance of the district of Humacao, Rómulo Villahermosa y Borao, before his clerk, Carmelo Martinez y Rivas, under date of the 5th of August, 1902, proceed to make the liquidation, accounts and partitions of the aforesaid estate between the interested parties after having carefully examined the said order of declaration of heirship, the inventory made under date of the 22nd of the present month, the appraisement or valuation made of the properties constituting said estate as well as the debts which appear in said order together with other documents showing the correctness of
10 the same and from the contents of which there appear the following statements, which, for the better understanding of all the parties concerned, are set forth herein and in regard to which the interested parties are agreed:

First Statement.

In regard to the declaration of heirs.

The death of Clemente Díaz y González occurred in this town on the 30th of April, 1890, and the deceased having died abintestate and having left a legitimate son born of his marriage with his widow Petra Quiñones y Rodríguez, the latter applied to the court of first instance of this district, requesting the declaration of heirship of her deceased husband in favor of her aforementioned son and by virtue of said request the order was made, the certified copy of which reads as follows:

"I, Carmelo Martínez y Rivas, Scriveneer of the court of first instance of Humacao, do hereby certify: That, in regard to the proceedings instituted by Petra Quiñones, relating to the declaration

of heirs of Clemente Díaz, the following order has been made, the contents of which are as follows: Order. In the town of Humacao on the 5th day of August, 1892, Rómulo Villahermosa y Borao, judge of first instance of this town and its district. In view of these proceedings. Finding, that Clemente Díaz y González, a native of the town of La Ceiba, married to Petra Quiñones y Rodriguez, with residence in the island of Vieques, died in the same on the 30th of April of the year 1890, without having executed a will and
11 that there has been left of the aforesaid marriage a son called Clemente Díaz y Quiñones who has survived him, without having any other legitimate descendants.—Finding, that his aforesaid widow, Petra Quiñones y Rodríguez, applied to this court under date of the 28th of June last, stating that her husband had died abintestate and that his aforesaid son was his only legitimate heir and presenting the Church certificates and a certificate from the civil registry which show her relationship to the deceased and the death of the latter, for which reason she finally requests that her aforesaid son, Clemente Diaz y Quinones, be declared abintestate heir of the aforesaid husband. Finding, that the information which she had offered in regard to the said particulars was admitted under summons of the district attorney and that the latter has delivered his opinion on the subject which is favorable to said declaration. Concluding, that the abin-state succession is constituted in the first place by the legitimate children according to section 931 of the Civil Code. Concluding, that in accordance with this legal provision the estate of Clemente Díaz y González belongs to his only son, Clemente Díaz y Quiñones, by reason of the fact that the deceased has died without leaving a will and it is therefore proper to make in favor of the latter the declaration of abintestate heir that has been requested. In view of the provisions of section 980 and following sections of the law of civil procedure the judge of first instance, before me, the Scriveneer of the court, said:—That he ought to declare and declared abintestate heir of Clemente Díaz y González the legitimate son of the latter Clemente Díaz y Quiñonez and
12 ordered that a certified copy of this declaration be given to his legitimate representative for the exercise of his right. And by his aforesaid order the judge so directed, ordered and signed the same to which I certify. Rómulo Villahermosa.—Before me, Carmelo Martínez y Rivas. And at the request of the petitioner I issued these presents at Humacao on the 6th of August of the year 1892. Carmelo Martinez y Rivas.—There is a rubric.

Second Statement.

In regard to the appointment of a guardian of the heir.

Inasmuch as the death of Clemente Díaz y González occurred at the time when the civil code was already in force in this province and as, therefore, his widow is entitled to the quota in usufruct which is fixed by section 834 of the code referred to, and since said widow has therefore interests that are opposed to those of her son Clemente Díaz y Quiñones the sole heir of her deceased husband and

as the latter is under age, being a child, she requested the court of first instance of this district to appoint a guardian to said minor, said appointment having been in favor of the nearest relative that is a brother of his father, Santos Díaz y González, the order referred to being the one that appears in the certified copy which is inserted herein and reads as follows:—"I, Camilo Martínez y Rivas, record clerk of the court of first instance of the town of Humacao do hereby certify:—That in the proceedings instituted by Petra Quiñones y Rodríguez in regard to the appointment of a guardian for her son Clemente Díaz y Quinones, the following order
13 has been made: Order. In the town of Humacao on the 30th of September of the year 1892, Rómulo Villahermosa y Borao, judge of first instance of said town and district, in view of these proceedings and of the preceding obligations and acceptance thereof said: That he must confer and conferred upon Santos Díaz a resident of Vieques the appointment of guardian of his nephew Clemente Díaz y Quiñones, legitimate son of his brother Clemente Díaz y González in order that he may represent the said nephew in court and out of court and in the inventories, appraisement, partition and adjudication of the estate left at the death of his brother germane Clemente Díaz y González granting to him the powers which according to law are necessary not only for the purpose mentioned but also in every matter in which the interests of the latter may be opposed to those of his mother, Petra Quiñones y Rodríguez and cannot be represented by the latter according to law, because for all this the aforesaid appointment is made and the judge of first instance interposes his authority and judicial decree ordering that of this order such certified copy be issued to the respective parties as may be requested by them. It was so ordered and signed before me by the judge of first instance, to which I certify. Rómulo Villahermosa. Before me, Carmelo Martínez y Rivas. And in order to deliver the same to the guardian Santos Díaz y González, who has made a request to that effect, I issue these presents which I sign in the town of Humacao on the 26th day of the month of November, 1892.

Carmelo Martínez y Rivas. There is a rubric.

14 *Third Statement.*

In regard to the property which was brought into the conjugal partnership.

At the time when the deceased Clemente Díaz y González married Petra Quiñones y Rodríguez, the latter, according to her own statement and according to the documents which we have before us, did not bring into the conjugal partnership any property of any kind and the husband brought into the same all those that appear from the inventory and which he had acquired by inheritance from his deceased father, Alejandro Díaz, and some other property consisting of personal property and live stock of which he disposed before and during the marriage, so that not only there are no profits therefrom, but there are some debts which are enumerated in their

respective statements upon making an agreement in regard to the form of payment of the same with the property left by the principal, Clemente Díaz.

Fourth Statement.

In regard to the debts left by Clemente Díaz y González at the time of his death.

As appears from the certified copy of the act of conciliation which took place before the municipal court of this town between Ramón Aboy y Benítez, creditor of the deceased Díaz y González, and his widow Petra Quiñones y Rodríguez, under date of the 5th of April, 1892, the latter acknowledged that her deceased husband owed to the said Aboy the sum of 1235 pesos and 3 cents, binding him-
15 self, besides, to constitute a first mortgage as a guarantee of the payment of the said sum on that portion which belonged to the principal on the farm called "Destino". And, besides, 200 pesos which appear in a promissory note issued in favor of Messrs. Mouraille y Martineau and signed by the deceased Clemente on the 25th of July of the year 1889, and by the witnesses Juan Dechoudens and Augusto N. Delerme, and another sum of 207 pesos and 50 cents which she is to pay as one half of another document issued also in favor of Messrs. Mouraille y Martineau for the amount of 415 pesos and which is signed by the deceased Clemente and his brother Santos Díaz who is to pay the other half, on the 20th of August *on* the year 1889, and by the witnesses José Ramos and Manuel Benítez Santana. Which documents were endorsed on the 16th of October, 1892, by Messrs. V. Mouraille y Martineau in favor of Ramón Aboy y Benítez. And 56 pesos which appear also in another bill for medical attendance rendered by Dr. Carlos Enrique Jaspard to the deceased Clemente, which sum was paid by Ramón Aboy Benítez to the doctor referred to. And lastly 236 pesos and 18 cents which is the amount of the interest to be paid according to agreement, on the sums which appear in the aforesaid private documents, amounting in all to 2934.71 pesos which is the sum due to Ramón Aboy. The ratification and acknowledgment of which debts, as stated above, were carried into effect by the widow Petra Quiñones y Rodríguez, together with Santos Díaz y González, guardian of the minor Clemente Díaz y Quiñones, by a public deed executed in favor of Ramón Aboy y Benítez in this town on
16 the 20th of the present month before the notary Leandro Lara y Tomé; the aforesaid Aboy having conveyed by means of the deed referred to and which relates to the aforementioned debt, acknowledged thereby the sum of 2630 pesos in favor of "La Sociedad Agricola y Pecuaria" V. Mouraille y Martineau, in conformity with the representatives of the succession of Clemente Díaz who bound themselves to pay to the partnership in whose favor the cession was made the sum referred to and to Ramón Aboy the balance due to him amounting to 304 pesos and 71 cents, the documents above mentioned and a copy of the deed referred to being annexed as vouchers to the record of these proceedings. And, for the payment

of the said debt it has been agreed to adjudicate to Messrs. V. Mouraille y Martineau the parcel of 131.5 cuerdas of land for the price at which it had been appraised, that is to say, for the sum of 2330 pesos (a doubtful word) the debt due to said gentlemen. And to Ramón Aboy y Benítez, in payment of the 304 pesos 71 cents which are owing to him, are likewise allotted the two shares in the houses which the succession has in co-ownership with Santos Díaz y González for their appraised value which amounts in the case of one house to 250 pesos and in the case of the other to 50 pesos making a total of 300 pesos between the two, so that there remains a balance of 4 pesos and 71 cents which will be delivered to him in cash by the widow Petra Quiñones.

Fifth Statement.

In regard to the legal usufruct in favor of the widow Petra Quiñones.

17 Inasmuch as the death of Clemente Díaz y González occurred at the time when the civil code was in force in this province it is indubitable that the legal usufruct established in the second paragraph of section 834 of the civil code belongs to his widow Petra Quiñones so that the property itself is reserved under naked title to his sole heir Clemente Díaz y Quiñones.

Based on the preceding statements I now proceed to make a statement of the bulk of the property, liquidation and deductions to be made from the estate left at his death by Clemente Díaz y González.

From the aforesaid operations, it appears: That at the death of Clemente Díaz, the latter left property amounting to 4730 pesos as appears from the inventory, and that the debts, likewise left by the principal, amount to 2934 pesos and 71 cents.

Deducting, therefore, this sum from the total amount of the property, there remains a net amount of 1795 pesos and 29 cents; and the third part of this sum which belongs in usufruct to the widow is 598 pesos and 43 cents, the ownership of which under naked title is reserved to the heir Clemente Díaz y Quiñones to whom belong the other two thirds of which he has full ownership and which amounts to the sum of 1196 pesos and 86 cents, which items make a total of 4730 pesos equivalent to the estate appearing in the inventory.

By virtue of the aforesaid, I, the undersigned, who is the party in charge of the partition, proceed to make a statement of the bulk of the property, liquidation and partition of the estate left by Clemente Díaz y Gonzáles, in the following manner:

18

According to the inventory above mentioned the estate of the said Clemente Diaz y González amounts to		$4,730.00
In the following manner:		
In the rural property.....	$4,430.00	
In town property	300.00	
Total amount.....	$4,730.00	4,730.00
General liabilities. From the aforesaid amount must be deducted the debts amounting to.....		2,934.71
Balance.....		1,795.29
The capital of Clemente Díaz, after the deductions for debts have been made, amounts to one thousand seven hundred and ninety five pesos and twenty nine cents.		$1,795.29
Of this sum one third belongs as usufruct to the widow Petra Quiñones y Rodríguez and amounts to.....	$598.43	
To the heir, Clemente Díaz for his legal share	$1,196.86	
Total amount.....	$1,795.29	$1,795.29

Itemized Statement.

For the payment of debts.....	$2,934.71	

19

Inventoried share of Clemente Díaz y....	$1,196.86	
For the ownership of said property belonging to the aforesaid heir and the usufruct of the same belonging to the mother	$598.43	
Total amount.....	.....	$4,730.00
Property according to inventory.....	.....	$4,730.00
		$0,000.00

In order to make up the aforesaid capital the following inventories are made of the shares belonging to each heir.

Allotment and Payment.

Inventoried share.

For the payment of debts.

To be received by Messrs. V. Mouraille y Martineau for the payment of the debt to them — two thousand six hundred and thirty pesos $2,630.00

To be received by Ramón Aboy y Benítez, likewise, for the payment of a debt of three hundred and four pesos and seventy one cents $304.71

Total amount..... $2,934.71

And the following rural property is allotted to Messrs. V. Mouraille y Martineau in payment of the amount due to them:

A parcel of land consisting of one hundred and thirty one and a half cuerdas
20 of land equivalent to fifty one hectares, 68 ares and thirty seven centiares, which parcel of land is situated in the ward of Puerto Ferro of this municipal district and which formerly formed part of the farm called Destino, from which it has been segregated and which is bounded, on the north, by the farm called Santa María belonging to Carlos Le Brun; on the south by lands of Ildefonso Leguillon and of Eufrasio Colon; on the east by land belonging to Messrs. Mouraille y Martinueau; and on the west by those of Santos Diaz. Said parcel of land appears recorded in the Registry of Property in favor of the principal, Clemente Díaz, and of his brother, Santos, who owned the same in common as an undivided property at the time it formed part of the farm called Destino, in vol. 52 of the records of the Registry of Property under number 7 of the municipality of Vieques on folio 48 property No. 304, 4th inscription, made under date of the 2nd inst. by the Registrar Feliciano Piñol. The parcel of land above described was unanimously appraised by the experts at the rate of twenty pesos per cuerda, the one hundred and thirty one and a half cuerdas giving, therefore, an amount of two thousand six hundred and thirty pesos
21 which is equal to the amount of the debt so that Messrs. V. Mouraille y Martineau are paid therewith..... ..... $2,630.00

Ramón Aboy y Benítez is to receive in payment of what is owing to him three hundred and four pesos and seventy one cents	.....	304.71
And, in payment thereof there is allotted to him one half interest in a wooden house which is roofed with galvanized iron and situated on Condesa St. of this town at the corner of San Juan St., being adjacent as one enters on the right to another house belonging to Santos Díaz; on the left side to San Juan St., forming the corner thereof, and at the rear to another house belonging to the succession of Alejandro Díaz, which house was unanimously appraised by the experts at five hundred pesos of which one half belongs to the succession of Clemente Díaz, and the other half to Santos Díaz, who is a co-owner of the same, so that two hundred and fifty pesos belongs to Aboy y Benitez	.....	250.00
And further, one half interest in another house which is also built of wood and roofed with shingles and situated on San Juan St., being adjacent as one enters on the right to the former house already described herein; on the left to the 22 house of Marcos Delgado; and at the rear to another house of Santos Díaz. This house was likewise unanimously appraised at one hundred pesos which he likewise owns in common as undivided property together with the other co-owner Santos, and the same is allotted to Aboy for the amount of fifty pesos	.....	$50.00
And further, in cash, four pesos and seventy one cents which were delivered to him by the widow Petra Quiñones whereby the whole amount due to him is paid.	.....	$4.71
Total amount.....	$2,934.71	$2,934.71

Inventoried share of the legal usufruct belonging to the widow, Petra Quiñones y Rodriguez.

For the usufruct of five hundred and ninety eight pesos and forty three cents, which amount is equal to the third part of the estate that is to be distributed in co-ownership with her son and heir, Clemente Díaz y Quiñones, the following rural property is allotted to the aforesaid lady	.....	$598.43

	A parcel of land consisting of ninety cuerdas which are equivalent to thirty five hectares thirty seven ares and thirty		
23	six centiares and which are bounded, on the north, by land belonging to Santos Díaz; on the South and on the west, by the high road leading to Puerto Ferro, and on the east, by land belonging to Ildefonsó Leguillon.		
	The parcel of land hereinbefore described is situated in the ward of Puerto Ferro and at a place called El Destino, on account of having formed part of the farm of that name in the municipal district of this town. It was unanimously appraised by the agricultural experts at twenty pesos per cuerda so that the ninety cuerdas of which it consists amounts to the sum of one thousand eight hundred pesos which is increased by four pesos and seventy one cents which the widow has paid in cash to the creditor Aboy, as will be seen by a comparison made between the one thousand seven hundred and ninety five pesos and twenty nine cents which is the net amount of the capital to be distributed up to the one thousand eight hundred pesos which is the value of the rural property referred to, which difference of four pesos and seventy one cents is renounced by the widow, Petra Qui-		
24	ñones, in favor of her son Clemente.	$598.43	$598.43
	Both amounts being thus balanced.	000.00	000.00
	Inventoried share for the payment of the heir Clemente Díaz y Quiñones.		
	This party is to receive for the legal share inherited from his father one thousand one hundred and ninety six pesos and 86 cents	$1,196.86	
	For the ownership under naked title that belongs to him with regard to the third part of one thousand seven hundred and ninety five pesos which is the net amount of the capital to be distributed, and which share is kept in usufruct by his mother, five hundred and ninety eight pesos and forty three cents.....	$598.43	
	Total	.....	$1,795.29

And in payment of his share there are allotted to him two thirds of the property described in the inventoried share of his mother, of which two thirds he has full ownership, and the amount thereof being one thousand one hundred and ninety six pesos and eighty six cents	$1,193.86	
And further for the ownership under naked title that belongs to him of the other two thirds allotted in usufruct, to his mother, that is, two thirds of the rural property referred to, in order that he may enjoy the same in common with his mother as an undivided property, five hundred ninety eight pesos and forty three cents, with which amount the share due to his heir is fully paid.....	$598.43	
Total amount.....	$1,795.29	$1,795.29

Considering the aforesaid operations as terminated, they proceed to make the following remarks:

First. That in case it should appear that there was other property belonging to Clemente Díaz González which has not been included in these partitions it will be distributed between the interested parties proportionately as set forth hereinbefore.

Second. That with regard to the allotment made in favor of the creditors for the payment of debts, the interested parties bind themselves to guaranty the title to the same and to answer for all obligations for which the same may be liable in accordance with the law.

And the aforesaid parties drafted the account of partition and adjudication of the property left at the death of Clemente Díaz y González in the terms set forth herein and as evidence of their conformity with and acceptance of the same all the interested parties sign the aforesaid account.

PETRA QUIÑONES,
Widow of Díaz.
AUGUSTO N. DELERME.
SANTOS DIAZ.

I, Carmelo Martínez y Rivas, scriveneer of the court of first instance of the town of Humacao and the district thereof, do hereby certify, that, in the proceedings instituted by Augusto Nere Delerme, Petra Quiñones y Rodríguez and Santos Díaz González, relating to the approval of the operations of lease, appraisement, liquidation, partition and adjudication of the estate left at the death of Clemente Díaz y González, the following order has been made on this date:

In the town of Humacao on the 27th of December 1892, Isidoro Soto Nussa, acting judge of first instance of this district, in view

of these proceedings: First: Finding that Clemente Díaz y González, late resident of the island of Vieques, died in the same on the 30th of April of the year 1890, without having made a will, and that his widow, Petra Quiñones y Rodríguez, having applied to this court requesting that her legitimate son, Clemente Díaz y Quiñones, be declared abintestate heir of the former, an order was issued under the date of 5th of August of the year 1892 making the declaration requested; and subsequently on the 30th of September of the last mentioned year the appointment having been made of the guardian for the aforesaid heir by an order made by this court, after having complied with the legal requisites and said appointment having been made in favor of Santos Díaz y González, legitimate
27 brother of the principal herein and uncle of the former. Second: Finding, that after the inventories and appraisements had been extrajudicially made with the common consent of all the parties concerned in the inheritance, by the accountant in charge of the partition appointed for that purpose, the operations of partition of the estate left at the death of Clemente Díaz y González were carried into effect, and said proceedings have been filed in writing with the court by the aforesaid interested parties, the minor and heir being represented by the guardian appointed for him in order that the Court might approve said proceedings. Third. Finding, that in accordance with an order issued on the 12th inst., the aforesaid operations or proceedings were exhibited in the clerk's office for a period of eight days, and this fact being communicated to the parties concerned in order that they might examine the same and make use of their right, the said period has expired and no opposition has been made thereto. First. Concluding, that no opposition having been made to the aforesaid proceedings of partition, it is proper to approve the same in accordance with the provisions of section 1080 of the law of civil procedure, the judge of first instance before me, the scriveneer, said: that he must approve and did approve, in so far as it was in accordance with law, the proceedings of the inventory, appraisement, liquidation, partition and adjudication of the property left at the death of Clemente Díaz y González, which proceedings had been carried into effect and filed in the court on the 3rd of July last by the parties concerned, and the
28 judge ordered that after payment had been made of the proper amount in stamped paper the aforesaid proceedings be recorded in the Registry of the notary public of Vieques, Leandro Lara y Tomé, who shall furnish to the parties concerned certified copies of their respective inventoried shares in order that within the terms prescribed by law they may present the same for liquidation and for the payment of the taxes due thereon to the Royal Treasury, and for such other purposes as may be proper, and that to this end said proceedings shall be separated from the record and the originals thereof be delivered to the aforesaid notary public with a certified copy of this order and of the death certificate. It was so ordered, commanded and signed by the aforesaid judge, to which I certify.

ISIDORO SOTO NUSSA.

Before me:

CARMELO MARTINEZ Y RIVAS.

And in compliance with the aforesaid order I issue these presents at Humacao on the 2nd of January of the year 1894.

CARMELO MARTINEZ Y RIVAS.

I, Carmelo Martinez y Rivas, scriveneer of the court of first instance of the town of Humacao and the district thereof do hereby certify: that in the record of the proceedings instituted by Augusto Nere Delerme, Petra Quiñones y Rodriguez and Santos Díaz y González, with regard to the approval of the lease, appraisement, liquidation, partition and adjudication of the estate left at the death of Clemente Díaz y González, there is a death certificate which literally reads as follows:—

Certificate: I, David Alvarez y Rodriguez, municipal judge of this island, do hereby certify that on folio 263, vol. 4, section of
29 births of the civil register of this municipal court there is an entry which literally copied reads as follows:—No. 295, Clemente Díaz y Quiñones. At Isabel Segunda, in Vieques, at nine o'clock in the morning of the 15th of December of the year 1890, before Florencio Alvarez y González, substitute municipal judge, who discharges the duties of said office on account of the absence of the municipal judge, and Cecilio Rodríguez y González, clerk of the court, there appeared Matías Quiñones, a native of Fajardo, Porto Rico, who is of age, a widower, farmer and resident of this town, living in Conde de Mirasol St., in a house without a number, and requested the inscription of a boy, and for that purpose and as grand-father of said boy he declared that said boy was born in the house of the party making the declaration, on the 5th of the present month at eleven o'clock at night. That he is the legitimate son of Clemente Díaz y González, a native of this island and deceased, and of Petrona Quiñones y Rodríguez, a native of La Ceiba, Porto Rico, twenty years of age, a widow and following the occupations pertaining to her sex and residing at the home of the party making the declaration. That said boy is a grand-child on his father's side, of Alejandro Díaz and of Cecilia González, the former of whom is a native of Galicia, while the latter is a native of Portugal, both of whom are deceased; and, on his mother's side, of the party appearing before the court and of Antonia Rodriguez deceased, both of whom are natives of Fajardo. And that the name of Clemente had been given to the aforesaid boy. All of which was witnessed by
30 Juan de la Cruz, a native of Spain, of age, single, and an employee, residing in San José St., and by Manual Nicolás Berrios y Rodríguez, a native of the town of Humacao, of age, married, amanuensis, and residing in San José St. After this document had been read at length and after the persons who are to sign the same had been requested to read it for themselves, if they should deem it convenient, the seal of the municipal court was affixed thereto and it was signed by the judge, the witnesses, and, since the parties making the declaration could not write, it was signed by Esteban Rivera y Ortiz, and, as clerk, I certify to all of it. There is a seal of the municipal court. Florencia Alvarez. Esteban de Rivera. Juan de la Cruz. Manuel N. Berrios. Cecilio Rodríguez.

3—51

This is a copy which agrees with the original to which I refer. And in order that it might so appear I issue this certified copy at the request of the aforesaid Petra Quiñones in Vieques on the 17th of February 1891. D. Alvarez. Fees 40 cents. The clerk. Cecilio Rodríguez. And for the purpose of delivering the same to the widow, Petra Quiñones, together with a certified copy of the order approving the partition of the abintestate estate of Clemente Díaz, and of the proceedings referred to, I issue these presents at Humacao on the 2nd of January 1894. Carmelo Martínez y Rivas.

I, Antonio de Aldrey y Montolio, notary public of the island of Porto Rico, with residence, domicile and office open in this city which is the chief town of the notarial district and keeper of the records of the district of Humacao, do hereby certify, that the foregoing certified copy agrees fully and exactly with the original
31 thereof which is filed in the general archives of the notaries public of which I am in charge and to which I refer. In witness whereof and at the request of Damian Monserrat, I issue this copy to which I attach my signet, signature and rubric, and which is written on 12 folios of notarial paper used in m office, attaching thereto, further on, a fifty cent stamp as prescribed by the law relating to notaries and after having made a record thereof I issue this copy at Humacao, Porto Rico on the 22nd of September, 1911.

(Signed) ANTONIO DE ALDREY,
Notary Public.

San Juan July 16th 1912. Certified Correct.
(Signed) F. FANO,
Interpreter & Translator U. S. Dist. Court.

32 (Filed December 20th, 1911.)

EXHIBIT "B½."

(Translation.)

To the Registrar of Property of Humacao, P. R.

SIR: Damian Monserrat y Suro, of counsel for Clemente Diaz y Quiñones, in certain proceedings followed before the District Court of the United States for Porto Rico, respectfully sets forth:

That in order to prove certain facts involved in said suit, he will need a certificate relative to all inscriptions of Dominion entered in said Registry, with regard to a rustic estate the description of which is as follows:

"Estate, situated in the ward of Florida and Puerto Ferro, in the municipal district of Vieques. It contains one hundred and thirty one cuerdas, and fifty hundredths, equivalent to fifty seven hectares, five ares, and eighty three centiares; bounded on the north by the plantation "Santa Maria" belonging to Carlos Leburn, on the south by lands of Ildefonso Leguillon and of Eufrasio Colon, on the

East by a property of Mourraille and Martineau and on the west by properties of Don Santos Diaz.

It is recorded in volume 7 of Vieques, property number 321, at folio 149 and following.

Wherefore, I ask that said certificate be issued as above set forth, that is, embodying a full and concrete transcript of all entries of Dominion therein made relative to the above described property.

San Juan, P. R., September 13th, 1911.

Respectfully,

DAMIAN MONSERRAT.

I, Miguel Planellas Yañez, Registrar of Property of the city of Humacao and its District, Porto Rico.

Certify: That according to inscription No. 1 of the property number 321, at folio 149 of volume 7 of Vieques, the property described in the foregoing petition was recorded in favor
33 of Clemente Diaz Gonzalez, by adjudication to him made, on account of a division made of a larger property which he owned in common, undivided, with Santos Diaz Gonzalez, in payment of his joint interest therein, which inscription was made by virtue of the copy of a deed executed in Vieques, on the 1st of February, 1894, before the Notary Don Leandro Lara.

That according to the second inscription at folio 150 of said volume the said property was recorded in favor of Messrs. V. Mourraille, and Martineau, by title of adjudication in payment of debts, upon the partition of the estate left by Clemente Diaz Gonzalez, who died intestate on the 30th of April 1890, which operations were carried out by the widow Petra Quiñones Rodriguez, and the defensor of the minor heir Clemente Diaz Quiñones, and approved by the Court of First Instance of the District of Humacao, in an order dated April 27th, I mean to say, December 1893, which inscription was made by virtue of a copy of the deed of partition executed in Vieques *executed in Vieques* on the first of February 1894, before the Notary Don Leandro Lara.

By inscription 3rd of folio 151, of the said volume 7 of Vieques it was recorded undivided, without specifying to what extent, in favor of Maria Catalina Garnier and her children Maria Amelia and Maria Luisa Noemi Martineau y Garnier, the interest or rights in and to the said property held by Don Victor Martineau y Voyard, as partner of the agricultural partnership V. Mourraille and Martineau, who died on the 20th of February 1893, which inscription was made in view of the certificate of death of Don Victor Martineau y Voyard, a copy of his will executed in Vieques on the 19th of May 1891 before the Notary of Humacao Don Marcelino Estevanez and copy of the deed of partition of the estate executed in Vieques on the 8th
34 of July 1894 before the notary Don Leandro Lara.

And by the fourth and last inscription of said property at folio 152 of said volume, the whole property was recorded in favor of Don Victor Mourraille y Boneterre, by adjudication made to him in payment of his social share and for the payment of debts upon the dissolution of the partnership V. Mourraille & Martineau, which in-

scription was made by virtue of a copy of the deed executed in Vieques on the 31st of May 1894 before the Notary Leandro Lara.

This is all what appears from the Books of Inscriptions of this Registry of Property.

And at the request of Don Damian Monserrat y Suro as attorney for Clemente Diaz y Quiñones, I issue the present in Humacao on the 26th of September 1911.

MIGUEL PLANELLAS,
Registrar of Property.

Excise stamps to the value of $2.30 have been cancelled.
No. 6 of the Tariff.
Humacao Sept. 26th, 1911.

MIGUEL PLANELLAS.

A correct Translation.
(Signed) F. FANO,
Official Interpreter & Translator.

35 *The Court's Instructions to the Jury.*

Gentlemen of the Jury: If you have listened to this rather tedious case with one-half the interest that I have, and if you have gotten from it one-half the instruction which I have received, your time will not have been wasted. We live in a community which is largely given up to agricultural products and to allied industries; and to have had the advantage of the expert testimony of men who have spent their lives, of from twenty to forty years in active production of sugar cane and of cattle, is certainly illuminating to my mind. And that the witnesses on both sides were unbiased is proven by the practical unanimity of the result which they arrived at, as to values, based on the application of different energies, and quite different methods.

The witnesses Benitez Castaño, for the plaintiff, and Le Brun, and Bonnet for the defendant, testified that land of the character of that here under consideration,—and the land was known to each of them—should have produced, if planted in cane twelve dollars per cuerda per annum, net, for the eighteen years which, without interest, would have amounted to $28,728.00, less such deduction, if any, you think should be made for the period from 1894 to 1900, in which the peso was circulating, and its value in relation to the gold dollar was sixty per cent. But two of the witnesses for the defendant, and one for the plaintiff, testified that the purchasing power of the provincial peso in Spanish times was the same as that of the gold dollar today.

36 Similarly, the two Benitez for plaintiff, and Aboy for the defendant, testified that pasture land was worth in the first period, 1894 to 1900, three to four pesos; 1900 to 1906, five to six dollars; 1906 to 1912, eight to twelve dollars. Those were the only three witnesses who testified with any definiteness as to the three periods, in regard to pasture. That would give an average of $6.60

per cuerda per year, and that, for eighteen years, would make, without interest, $15,810.40.

The witnesses Le Brun and Carlos Benitez seemed to me to be more practical in relation to cattle, and the results of their raising, than any of the other witnesses, and the witness Le Brun testified that cattle, if raised on this place, should have netted from eight to nine per cent per annum, taking into account the value of the property, and the stock that was upon it; and, for cane, he also testified that it should net twelve dollars per cuerda per annum, taking the average for the eighteen years.

Of course, such testimony is more or less speculative. Any testimony carrying the calculation over a period of eighteen years, with recollection only, and one's own experience of practical operation as a guide, is more or less speculative; but I know that the industry, and interest, and zeal of each of counsel for their clients, as well as their most scrupulous regard for their obligation to the Court, would have impelled them to produce before you for your information, and for mine, better evidence than that which has been produced, if it had been obtainable.

I have already found that the plaintiff in this case, under the facts as they were adduced, mostly documentary in their nature, constituting, as I have held them to do, a fraud in law, is entitled, on his coming of age, to the possession of this property; and, as to that,
37 by my direction, you have already found a verdict for the plaintiff in the case.

You are a jury called from the vicinage, and you have had before you the very best expert evidence that is obtainable, on the subjects that you are considering, in the Island of Porto Rico. I do not know that I ever heard more careful, or exact, or unbiased testimony. I do not think that any witness, even Sr. Mourraille, one of the parties, himself, was influenced in the slightest degree in his testimony by the fact that he did not have an interest.

You are called upon here, from the evidence and your best judgment, to determine what would be a fair compensation to this plaintiff for the retention of this land from him for the period of eighteen years, and, as basis for that, what a reasonable man, operating reasonably,—no extraordinary genius in agriculture,—under the evidence that has been adduced before you, would obtain, taking into consideration, for instance, what average each acre of this land should have produced; and, for this purpose, it is entirely immaterial whether it had been put into cane, or into cattle, or had been leased for one, or the other; because you are the judges of what, in all likelihood, would have been done with that land. And, taking all the different activities and surroundings and situations into consideration, what is a fair compensation between man and man for this unlawful retention of the occupation of this land. On the one hand, you must not be led astray by an enthusiasm as to the figures, which some of the witnesses testified to as to values, and, on the other hand, you must not be unjust in unduly reducing whatever amount
38 you find.

I do not know that I ever saw a jury in whom I would feel

more confidence in submitting a question of this character. You have all of you given most intelligent attention. The evidence has been of an unusually high character, and unusually informing; and you will be able to reach, after the necessary time of computation, some figure which you consider to be just and right. I am going to permit you to take the calculations offered in evidence, to your jury room. Neither what I say to you in regard to the evidence, nor this calculation, is of any controlling force on you whatever, not the slightest whatever. I talk to you in this way because it is not only my right, but my duty; and I give you the advantage of every possible means of bringing your minds to a conclusion as to what a just result would be in this case; and if there is any way in which I can serve you, either by furnishing you with transcripts from the testimony, or in any other manner, or give you any better or fuller means of reaching a conclusion, you are at liberty to call upon me, and, in furnishing you a response to any question which you may ask, I shall have the cooperation and aid of counsel on both sides.

Mr. SCOVILLE: I ask your Honor to instruct that, under the pleadings, they can only find two-thirds of whatever amount they determine, for the plaintiff.

The COURT: Yes, under the pleadings as they stand now, it is only two-thirds of any amount which you find, which shall go to the plaintiff in this case; the other one-third is what is called the widow's dower right in our law, and its equivalent exists in
39 the Spanish law; and if you find that any amount is due,—and you of course will find that some amount is due,—only two-thirds of that will go to the plaintiff, and your verdict should be only two-thirds of the total amount that you find to be due for the unlawful retention of the land. The plaintiff's mother, the widow of Diaz senior, is not concerned in this suit in any way whatever. You have no concern with her recovery, because that, if she desires it, will be the subject of a separate action on her part in another case altogether.

The defendants pray in the counterclaim, that it is admitted by the plaintiff, that the amount which the predecessors in title of the present defendants paid for this land, viz., 2630 pesos, is to be deducted from any amount which you find, together with six per cent interest from February 1, 1904, to the date of your verdict; and in calculating the amount, if any, which you shall find due, you are directed to allow six per cent interest on each payment as it would have fallen due; six per cent for seventeen years on the first year's retention, and sixteen years on the second, etc., until you get the whole thing.

A JUROR: I would like to ask if it would not be right to subtract two-thirds of the 2630 pesos.

The COURT: The whole 2630 pesos, with flat interest at six per cent should be deducted.

A JUROR: That I understand was a claim against the whole land.

The COURT: I don't think we need to divide it up in that way. If the boy should hereafter choose to recover from his mother,
40 that is another question. But you are instructed to deduct from any amount which you may find; first, one-third, as the

widow's one-third; and then 2630 pesos, with six per cent interest from the 1st of February, 1894, to date.

Some instructions have been requested on behalf of the defendant, most of which I have felt compelled to decline, as they touch the part of the case which has already been determined. But the instructions which I have given you orally *is* embodied in the second instruction requested by the defendant, as follows:

The jury is instructed that defendants are entitled to recover the amount of 2630 pesos, provincial money, with interest thereon at the rate of six per cent, from the 1st day of February, 1894, to date.

I have already instructed you that orally. And the jury is instructed that its verdict must be based upon the evidence introduced, and that it may disregard any evidence which, in its judgment, does not furnish a basis upon which some definite conclusion, or amount can be arrived at. And with those qualifications, you are instructed to retire to your jury room.

A JUROR: I would like to know if that six per cent is compound interest for eighteen years.

The COURT: Yes, compounded for eighteen years. You see the theory on which that proceeds is this; suppose, for example, the value of the property retained would have been a thousand dollars for the year from the 1st of February, 1894. to the 1st day of
41 February, 1895,—the plaintiff would then have been out of the use of that money for those years, and for that the law says he shall receive compensation,—if you so find.

Mr. SCOVILLE: I wish to note an exception to the giving of the calculation to the jury.

The COURT: I caution you that this calculation, which I give you, is merely advisory, and is in no way controlling upon your judgment, and if you do not think it is correct, you may make inquiry, and the Reporter will furnish you a transcript, and you may tear it up and throw it in the waste basket.

Mr. SCOVILLE: I desire to note an exception to the charges refused.

The COURT: Certainly; note an exception to the charges refused, for the defendants.

The End.

42 *Stenographer's Certificate.*

I, Arthur J. Harvey, Official Stenographer of the District Court of the United States for Porto Rico, hereby certify that the foregoing document, consisting of seven typewritten pages, is a true and correct transcript of the Court's instructions to the jury in the case of Clemente Diaz y Quiñones versus Nancy Negron Longpre et al., which were delivered at the time of the trial thereof in the above entitled court.

ARTHUR J. HARVEY,
Official Stenographer of the District Court of the United States for Porto Rico.

43 In the District Court of the United States for Porto Rico.

(Filed February 11th, 1915.)

#794. Law.

CLEMENTE DIAZ Y QUIÑONES, Complainant,
vs.
NANCY NERÓN LONGPRÉ et al., Defendants.

Instructions Asked by the Defendants.

1st. The Jury is instructed that if from the testimony introduced it believes that the defendants have occupied the farm in question in good faith without interruption from the date that they took possession thereof to the date of the filing of this suit, without any knowledge of a defect in their title, then you should find that the plaintiff is not entitled to recover for the rents and profits of said farm prior to the date of the filing of the complaint herein.

Refused.

2nd. The jury is instructed that the defendants are entitled to recover the amount of 2,630 pesos provincial money with interest thereon at the rate of six per cent. from the first day of February, 1894, to date.

Granted.

3rd. The jury is further instructed that a peso was equivalent to sixty cents in United States currency.

Granted.

44 4th. The jury is instructed that the plaintiff is only entitled to recover the rents and profits of the farm in question from the date upon which he arrived at his majority.

Refused.

V.

The Jury is instructed that the evidence as to the probable production of the land sued for if the same had been planted to cane or dedicated to the raising of cattle is of such a speculative character that it would be impossible to arrive at any deefinite or accurate conclusion therefrom, and that the same should be wholly disregarded.

Refused.

VI.

The Jury is instructed that its verdict must be based upon the evidence introduced, and that it may disregard any testimony which does not furnish a basis upon which same definite conclusion or amount can be arrived at.

Refused.

(Signed) H. H. SCOVILLE,
Att'y for Defendants.

45 In the District Court of the United States for Porto Rico.

(Filed January 15th, 1915.)

At Law. No. 794.

CLEMENTE DIAZ Y QUIÑONES, Plaintiff,
vs.
NANCY NEGRÓN LONGPRÉ et al., Defendants.

Præcipe for Correction and Enlargement of Record by Plaintiff and Defendants.

To Antonio Aguayo, Esq., Clerk of the District Court of the United States for Porto Rico:

Please prepare, for submission to the Supreme Court of the United States in pursuance of this Præcipe and of the Writ of Error sued out herein by Defendants, Nancy Negron Longpré, et al., the following certificate and enlargement of the record, for use by the Supreme Court of the United States:

(1). A certificate to the effect that the so-called Exhibit "A" for Plaintiff, which appears on page 28 of original record and page 14 of the printed record, is erroneously entitled "Translation of Exhibit 'A' for Plaintiff", while it should be entitled "Translation of Exhibit 'A' for Defendants".

46 (2), A certificate to the effect that the so-called Exhibit "A" for Plaintiff, as it appears on page 86 of original record and page 47 of the printed record, is erroneously entitled "Exhibit 'A' for Plaintiff", while it should be entitled "Exhibit 'A' for Defendants."

(3), Translation of Exhibit "A-A" for Plaintiff.

(3½), Translation of Exhibit "A" for Plaintiff.

(4), Translation of Exhibit "B-½" for Plaintiff.

(5), Copy of charge of Court to the Jury, certified to by official stenographer; and requests for instructions filed by defendants with Court's rulings thereon.

(6), Copy of this præcipe.

(7), Translation of Plf. Exhibit ½ "A", being document of emancipation.

We, the undersigned, counsel for Plaintiffs-in-Error and Defendant-in-Error, respectively, hereby jointly ask for the above enlargement and correction of the record, and stipulate that same shall be at the expense of Plaintiffs-in-Error.

San Juan, Porto Rico, this 14th day of January, 1915.

(Signed) JOSEPH ANDERSON, JR.,
(Signed) DAMIAN MONSERRAT, JR.,
Per A.,
Attorneys for Plaintiff and Defendant-in-Error.
(Signed) H. H. SCOVILLE,
By JOSE R. F. SAVAGE,
Attorneys for Defendants and Plaintiffs-in-Error.

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47 (Filed December 20th, 1911.)

EXHIBIT "½ A" FOR PLAINTIFF.

Translation.

Compared Copy.

Number Nine.

Deed of Emancipation in the town and island of Vieques, Porto Rico on the 3rd day of September nineteen ten.

Before me

Carlos Travesier, Lawyer and Notary Public residing in the city of Humacao and with an office on "Frias" Street but being incidental in this town,

Appears

Doña Petra Quiñonez Rodriguez, forty one years of age, widow, land owner and resident of Vieques, Porto Rico.

The appearer, whom I certify to know personally, and which she verifies for herself. And having in my judgment the necessary legal capacity to execute the present deed freely and voluntarily

Says

First. That she is the legitimate mother exercising the partia potestas of Don Clemente Diaz y Quiñonez, whose father Don Clemente Diaz y Gonzalez died on the thirtieth of April of the year eighteen and ninety.

Second. That recognizing in her legitimate son Don Clemente Diaz y Quiñonez the legal circumstances and the moral conditions of intelligence, of education and capacity to govern himself and administer his property as if he were of full age, at his request and for the reason that he is more than eighteen years of age,

48 she has resolved to concede to him his emancipation in order that he may legally attend to, and manage his personal property, without the interference of his mother and for the purpose of carrying this into effect,

She Grants

That she emancipates her son Don Clemente Diaz y Quiñonez without any further limitations that those established in article three hundred and seven of the Civil Code in force in Porto Rico.

And I, the Notary, called her attention to the necessity of noting in the Civil Registry a copy of this document in order that it may have legal effect in respect to third persons.

Thus she grants in my presence and in the presence of instrumental witnesses who are without legal exception for doing it and

whom I certify I know personally, and who were Don Fernando de Valle y Don Saturnino Leguillon, both of age, married, residents of this town, the first an employee and the second a business agent.

All of which as well as to my acquaintance with them, their professions and residences of the grantor and of the witnesses and other further contents of this public deed, I, the Notary certify. (Signed) Petra Quiñonez Vda. de Diaz Fernando del Valle. Satº Leguillon. (Signed) Carlos Travesier. There is an Internal Revenue Stamp of one dollar cancelled by the seal of the notary.

This copy corresponds true and exactly with the original
49 of the same context found in my protocol to which I refer and I sign and seal in rubric, this copy in proof of it and at the petition of Señora Quiñonez, the same month, day and year of its execution I issue it.

(Signed) CARLOS TRAVECIER.

On this day on which it has been presented in the office of the Civil Registry of this Island the present certified copy of a deed of emancipation the same is noted on the margin of the corresponding act of inscription in compliance with what is required by article 303 of the Civil Code.

Vieques, September 3, 1910.

(Signed) MODESTO RIO OLMO,
In Charge of the Civil Registry.

[Seal of the Secretary of the Town of Vieques.]

This document has been vised for the inscription 3rd of property No. 320, page 145 of Volume 7 of Vieques.

Humacao, 30 of October, 1911.

(Signed) MIGUEL PLANELLAS,
Registrar of Property.
(Signature illegible)

[Seal of the Registrar of Property of Humacao.]

A Correct Translation.

(Signed) F. FANO.
Official Interpreter.

50 In the District Court of the United States for Porto Rico.

At Law. #794.

CLEMENTE DIAZ Y QUIÑONES, Plaintiff,
v.
NANCY NEGRON LONGPRE et al., Defendants.

Certificate.

I, Antonio Aguayo, Clerk of the District Court of the United States for Porto Rico do hereby certify that the foregoing type-

written pages numbered 1 to 49, inclusive, are all true and correct copies of papers on file and of record in my office as called for by the praecipe for correction and enlargement of the Record, filed by the Plaintiff and Defendants, excepting the Court's Instructions to the Jury, which are certified to by the Official Stenographer of this Court and the two certificates prepared by me in accordance with said praecipe. A copy of said praecipe is hereto attached.

Witness my official signature and the Seal of said Court, at San Juan, in said District, this 12th day of February, A. D. 1915, and in the 139th year of the Independence of the United States of America.

Attest:

[United States District Court for the District of Porto Rico.]

ANTONIO AGUAYO,
Clerk District Court U. S. for P. R.

51 [Endorsed:] No. 794. In the District Court of the United States for Porto Rico. Clemente Diaz y Quinonez vs. Nancy Negron Longpre et al. Additional Record.

52 [Endorsed:] File No. 23,340. Supreme Court U. S. October term, 1914. Term No. 51. Nancy Neron Longpre et al., Pl'ffs in error, vs. Clemente Diaz y Quinones. Stipulation of counsel as to supplemental record, supplemental record and stipulation to restore cause to calendar and submit on printed briefs. Filed March 1, 1915.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 51.

HANCY NERON LONGPRE, GUSTAVO MOUR-RAILLE, ET AL., PLAINTIFFS IN ERROR,

vs.

CLEMENTE DIAZ Y QUIÑONES.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

HECTOR H. SCOVILLE,
Attorney for Plaintiffs in Error.

JOSE R. F. SAVAGE,
Of Counsel.

(23,340)

SUBJECT INDEX.

List of Cases Cited.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 51.

NANCY NERON LONGPRE, GUSTAVO MOURRAILLE, ET AL., PLAINTIFFS IN ERROR,

vs.

CLEMENTE DIAZ Y QUINONES, DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

Statement of Facts.

Clemente Diaz y Gonzalez, of Vieques, Porto Rico, died intestate on April 30, 1890, there surviving him his widow, Petra Quiñones y Rodriguez, and a minor child, Clemente Diaz y Quiñones, the defendant in error herein. On August 5, 1892, the defendant in error was declared by the Court of First Instance of Humacao to be the sole heir of the said

Clemente Diaz y Gonzalez. The said Clemente Diaz y Gonzalez was seized, at the time of his death, among other properties, of an undivided one-half interest in a farm known as "Destino," situated in the municipality of Vieques, Porto Rico, the other undivided one-half belonging to his brother, Santos Diaz y Gonzalez (p. 25 of the printed Record, folio 46). This farm was subsequently, by deed of partition executed February 1, 1894, by Petra Quiñones y Rodriguez on behalf of herself and of her minor son, the defendant in error herein, and the said Santos Diaz y Gonzalez, divided, and there was adjudicated as the share of the late Clemente Diaz y Gonzalez that part of the said farm described as follows:

> "Rural. Farm situated in the wards of la Florida and Puerto-Ferre, in the municipality of Vieques. It has an area of one hundred and thirty-one cuerdas and fifty-hundredths of land, equivalent to fifty-seven hectares, five ares, eighty-three centiares. It is bounded on the north by the plantation 'Santa Maria,' on the south by Don Ildefonso Leguillon and Don Eufrasio Colon; on the east by Don Victor Mourraille and on the west by Don Santos Diaz."

This piece of property was recorded on April 11, 1894, in the office of the Registrar of Property for Humacao, in the name of Clemente Diaz y Gonzalez, the decedent. The record further states that it was subject to a lien for one thousand two hundred pesos in favor of Don Miguel Kearney (p. 25, Record, folio 46).

On September 30, 1892, the Court of First Instance of Humacao appointed the said Santos Diaz y Gonzalez as the guardian (defensor) of the said minor, defendant in error, in accordance with section 165 of the Civil Code then in force, by an order which reads as follows:

> "In the town of Humacao, on the 30th day of September, 1892, Mr. Romula Villahermosa y Borao, Judge of the First Instance thereof, and its district, in view of this expediente and of the preceding obli-

gation and acceptance, said: That he ought to confer and did confer upon Don Santos Diaz y Gonzalez, resident of Vieques, the appointment of guardian (defensor) of his nephew Don Clemente Diaz y Quiñones, the legitimate child of his brother Germain Don Clemente Diaz y Gonzalez, to represent him in court and out of court, and in the inventories, valuation, partition, and adjudication of the relict estate left at the death of his brother Germain Don Clemente Diaz y Gonzalez, giving him the powers required by law, not only for said purpose, but also for all matters in which his interests might be in opposition to those of his mother, Doña Petra Quiñones y Rodriguez, and could not be represented by her according to law, and for all that he is thus appointed through the authority and judicial decree of his honor, directing that he be furnished with as many copies of this order as he may request. And it is so ordered. Signed by said judge before me, of which I certify. Romulo Villahermosa. Before me. Carmelo Martinez y Rivas" (p. 20 of the Record, folio 37).

On June 20, 1893, by document executed before the notary Leandro Lara y Tome, at Vieques, Porto Rico, the said Petra Quiñones y Rodriguez and the said Santos Diaz y Gonzalez as guardian (defensor) of the minor, Clemente Diaz y Quiñones, acknowledged that the estate of the late Clemente Diaz y Gonzalez was indebted to Ramon Aboy in the sum of two thousand and thirty-five pesos and three cents, and also in certain further sums, making in all a total indebtedness to the said Ramon Aboy by the said estate of two thousand nine hundred and thirty-four pesos seventy-one cents (p. 18 of the Record, folio 34). It is set forth in this document that the said Ramon Aboy had instituted a conciliatory act before the municipal court of Vieques, as a preliminary step to an action to recover this amount from the estate, and that the same parties had appeared therein and had acknowledged the indebtedness (pp. 15-17 of the Record, folios 28-32). By the same instrument Ramon Aboy assigned to the partnership of V. Mourraille & Martineau two thousand six

hundred and thirty pesos of the total credit recognized in his favor, and the said Petra Quiñones y Rodriguez and the said Santos Diaz y Gonzalez acknowledge the assignment and bind themselves to pay the same to the assignee *"after the partition of the estate left by Don Clemente Diaz, upon his death, for the debts which he left pending"* (p. 19 of the Record, folio 36).

On June 24, 1893, Don Augusto Neri Delerme, who was named auditor (contador-partidor) by agreement between the widow and the guardian (defensor) of the minor proceeded to make the liquidation, account, and partition of the properties left by the late Clemente Diaz y Gonzalez, whereby it appears that the total value of the estate had been appraised in the sum of four thousand seven hundred and thirty pesos, and that the total indebtedness of the said estate amounted to two thousand nine hundred and thirty-four pesos seventy-one centavos. It is recited that the widow, under the law, was entitled to the usufruct of one-third of the estate, or to the usufruct of five hundred and ninety-eight pesos forty-three centavos, this amount being one-third of seventeen hundred and ninety-five pesos, twenty-nine centavos remaining after deducting from the total amount of the estate the amount of the indebtedness. The division of the estate is then made, whereby the tract of land hereinbefore described was adjudicated to the firm of V. Mourraille & Martineau in payment of their credit of two thousand six hundred and thirty pesos, the said tract of one hundred and thirty-one and one-half cuerdas having been appraised at twenty pesos per cuerda, or a total valuation exactly equal to the amount of the debt. The balance of three hundred and four pesos seventy-one centavos due to Ramon Aboy was settled by the adjudication to him of certain properties not affected by this litigation, and there remained for the minor and the life interest of the widow a tract of land of some ninety cuerdas, not involved herein, valued at twenty pesos per cuerda. This partition agreement was thereupon signed by the auditor (contador-

partidor), the widow, and the guardian (defensor). These partition proceedings were thereupon submitted to the judge of First Instance of Humacao, who on December 27, 1893, entered an order approving the operation and directing that the same be protocolized, and that a copy thereof be issued and given to each of the interested parties, showing their respective shares in the inheritance. On the 1st of February, 1894, the widow, Petra Quiñones y Rodriguez, in pursuance of the order of the court, appeared before the notary Leandro Lara Tomé, at Vieques, in the District of Humacao, presented the certified copies of the court records and executed the notarial act of protocolization of division of property (Exhibit A for plaintiff, p. — supplemental Record).

A copy of this act of protocolization was issued to the firm of V. Mourraille & Martineau, and upon its presentation to the registrar of property for Humacao the aforesaid tract of one hundred and thirty-one and one-half cuerdas of land was inscribed in the name of V. Mourraille & Martineau, subject only to the lien for one thousand two hundred pesos in favor of Don Miguel Kearney (p. 26 of the Record, folios 48-49).

Upon the dissolution of the firm of V. Mourraille & Martineau on May 31, 1894, the aforesaid tract of land was adjudicated to Victor Mourraille y Boneterre, and thereupon it was recorded in his name in the office of the registrar of property of Humacao (p. 28 of the Record, folios 51-52). The plaintiffs in error are the heirs of the said Victor Mourraille y Boneterre, now deceased.

On April 4, 1911, Clemente Diaz y Quiñones, the defendant in error, filed his reformed complaint on removal in the District Court of the United States for Porto Rico, in this action, wherein he alleged that he was the owner of the tract of land of one hundred and thirty-one and one-half cuerdas, before described; that he acquired the same by inheritance from his father, Clemente Diaz y Gonzalez, whose sole heir he had been declared by the Court of the First Instance of Humacao on the 5th day of August, 1892; that on or about

the first day of February, 1894, the firm of V. Mourraille & Martineau, without any right, title or interest, entered upon the said property and forcibly ousted the defendant in error from the possession of the property; that upon the dissolution of the said firm the property was delivered to Victor Mourraille, the father of the plaintiffs in error; that the only right, title, and interest that the said firm of V. Mourraille & Martineau had was the void and pretended title which they secured from the mother of the plaintiff (defendant in error), Doña Petra Quiñones y Rodriguez, who illegally, unjustly, and contrary to law, and without any authorization on account of necessities and needs, pretended to sell and transfer said property in payment of a small and insignificant debt, which the conjugal partnership, composed of herself and her late husband, Clemente Diaz y Gonzalez, owed to the said firm; that thereafter, upon the dissolution of the firm, said Victor Mourraille took possession of said property with only such rights and interest as the said partnership had theretofore had; that upon the death of said Victor Mourraille the defendants (plaintiffs in error), the widow, and children respectively of said Victor Mourraille, took possession of said property with only such right, title, and interest as their father had acquired from the said partnership; that the said property is well worth the sum of twenty thousand dollars; that the rents and profits of the said property from the time the defendants (plaintiffs in error) through their predecessors, unlawfully took possession of same and ousted the plaintiff (defendant in error) therefrom have amounted to the sum of forty-five thousand dollars; and the plaintiff (defendant in error) thereupon prayed for a judgment for the possession of the said tract of land, for the sum of forty-five thousand dollars for the damages, rents, and profits thereof accrued since the beginning of the alleged unlawful occupation thereof, and for the costs of the action (pp. 1-3 of the Record, folios 1-5).

An answer to this complaint was filed on October 24, 1911,

by the plaintiffs in error, which answer, upon the filing of a demurrer thereto by the defendant in error was abandoned and an amended answer was filed on November 28, 1911 (pp. 8-13 of the Record, folios 15-23).

In this amended answer the plaintiffs in error admitted that the said Clemente Diaz y Gonzalez died intestate on April 30, 1890; that the defendant in error was his only son; that the firm of Mourraille & Martineau entered into possession of the said property described in the complaint in February, 1894; that the said firm was dissolved; that the property was thereupon delivered to Victor Mourraille, the predecessor in title of the plaintiffs in error; that the said Victor Mourraille took possession of the said property and acquired the rights and interests of the firm of Mourraille & Martineau therein; and that upon the death of the said Victor Mourraille, the plaintiffs in error, the widow and children respectively of the said Victor Mourraille, took possession of the said property with such rights, title, and interest therein as their late father had acquired from the said firm; and denied all the other allegations contained in the said complaint; and for further and affirmative defenses alleged that from the face of the complaint it appears that the action sought to be exercised is one for the recovery of the possession of real property held by the defendants (plaintiffs in error) under a title the source of which is the same as the source of title claimed by the plaintiff (defendant in error), and that the action of ejectment and mesne profits does not lie in such a case in this district; that it further appears from the said complaint that the defendants have a written title to said property, and as said complaint does not pray for the annulment of said title nor does it appear from it that any court of proper jurisdiction ever declared the nullity of said title, the action of ejectment does not lie; that the proceedings hereinbefore recited as to the declaration of heir, appointment of guardian (defensor) of the minor heir, the valuation, liquidation, and adjudication of the estate of the said

Clemente Diaz y Gonzalez, and the judicial approval thereof had taken place as hereinbefore set forth, as well as the recognition of the indebtedness to Ramon Aboy by the widow and the guardian (defensor) of the minor heir in the proceedings before the municipal judge of Vieques, that the Court of First Instance of Humacao had jurisdiction of the proceedings, and in the order of December 27, 1893, had approved the sale or adjudication of the property in litigation and ordered the same to be inscribed; that the administration of the estate of Clemente Diaz y Gonzalez having been proceeded with in due form of law by the three persons representing the estate, two of whom were the nearest relatives of the minor heir, and all the acts and doings of said persons having been submitted to the Court of First Instance of Humacao for its approval, and having been specifically approved by said court, and as no allegation of fraud on the part of the persons interested, the mother, the guardian *ad litem*, or the *partidor contador* or other persons has been made by the plaintiff (defendant in error), and as the Court of First Instance of Humacao had the exclusive jurisdiction in matters involving intestacy, a jurisdiction not possessed by the District Court of the United States for Porto Rico, the whole matter is *coram judice;* that the decree of the Court of First Instance of Humacao allowing and approving the adjudication to defendants' (plaintiffs in error's) predecessors in title of land for the payment of a debt of a deceased intestate is not open to collateral attack as to the necessity for such adjudication or the price at which it was made; that the predecessors in title of the plaintiffs in error acquired said property in good faith and with proper title in the year 1893, and have remained in the undisputed, quiet, and peaceful possession of the same from said time until the filing of this complaint, and they allege upon information and belief that the plaintiff (defendant in error) and his guardians were and have been residents of Porto Rico during all of said time, and that under section 1957 of the

Civil Code of Porto Rico at the time the said predecessors in title acquired said property and the military order of April 4, 1899, the plaintiffs in error have acquired a perfect title by prescription; that the title of the predecessors in interest of the plaintiffs in error was authorized in the proceedings for the division, partition, and adjudication of the inheritance of the defendant in error, and that if plaintiff has been wronged in said division, partition, and adjudication his right of action to ask for the rescission of said division was prescribed under the old Civil Code and under the present Code (article 1076, old Civil Code); that plaintiffs in error are advised and believe that there existed a necessity for the sale and adjudication of the land in question for the payment of debts, as said debts were contracted by the father of defendant in error in part for the cleaning and preparing his lands for crops and the gathering of the same, and in part by the mother of plaintiff (defendant in error) after his father's death for the payment of taxes and the purchase of food, medicine, and clothing for herself and for the defendant in error, and they allege that said adjudication was made at a fair and just price (pp. 8-13 of the Record, folios 15-23).

To this amended answer the defendant in error, on December 1, 1911, filed a demurrer alleging that it does not state facts sufficient to constitute a defense; that certain portions thereof were ambiguous, unintelligible, and uncertain, because certain denials were not such as required by the Code of Civil Procedure, and especially because the same call for conclusions of law; and that the allegations of prescription set forth in the fourth, fifth, sixth, and seventh defenses are ambiguous in that it is impossible to determine in what manner the said prescription and under what law said prescription has run, and because the same is not and could not be a defense to the action (pp. 13-14 of the Record, folios 24-25).

This demurrer coming on to be heard, on April 15, 1912,

this demurrer to the amended answer was sustained, to which the plaintiffs in error duly excepted (p. 29 of the Record, folio 53). The court filed an opinion, setting forth its reasons for sustaining this demurrer (pp. 29-32 of the Record, folios 54-58), to which exception was taken.

In this opinion the court holds that the action is not a collateral attack on the judgment of a court having jurisdiction because the Court of the First Instance of Humacao (referred to in the court's opinion as the District Court of Humacao) did not possess jurisdiction under the facts shown by the transcripts of its proceedings and the law then in force; that therefore its adjudication was a nullity and the present proceeding does not constitute a collateral attack. The court further holds in this opinion that the remedy of plaintiff is in ejectment and not in equity, and may be followed by such ancillary proceedings, in law, or in equity, or in both, as will entirely adjust the rights of the parties; that no allegation of fraud is necessary, nor is there any legal necessity that the defendant in error should have tendered the purchase price to the plaintiffs in error as a prerequisite to bringing the present action under the pleadings and the exhibits in the record; and, finally, that if the plaintiff (defendant in error) should succeed in his contention all proper deductions for the purchase price paid by the plaintiffs in error or their predecessors in interest could be made under the order and supervision of the court as well as any other adjustments which in that or in any other event might be necessary in the furtherance of justice.

Time having been granted to the plaintiffs in error to amend their answer on April 22, 1912, their amended answer was filed, wherein the same admissions and denials as those contained in the former answer were set forth, and it was further alleged as new matter that plantiffs in error were informed and believe that the defendant in error was under the *patria potestas* of his mother, Doña Petra Quiñones, from February 1, 1894, down to the filing of the complaint herein, or shortly prior thereto, and that under sections

158, 159, 160, *et seq.* of the Civil Code then in force and of sections 224, 225, and 226 of the present Civil Code the usufructs or rents and profits of said farm did not belong to, nor were they the property of, the defendant in error, nor was he entitled to the possession of said property or the usufruct thereof during said period, but the usufruct of said farm belonged to the plaintiff's (defendant in error's) said mother, and that the defendant cannot recover therefore in this suit; that said Petra Quiñones, mother of plaintiff, is still alive, and that under sections 834 *et seq.* of the Civil Code in force at the time of the decease of the father of defendant in error she has the usufructuary right or interest in and to one-third of the land described in the complaint if the defendant in error is the legal owner thereof, which is denied, and as such usufructuary is entitled to the use and possession of said one-third undivided interest in said property, and that no partition of said property having been made and all the right, title, and interest of said Petra Quiñones in said farm having been duly transferred to the predecessors in interest of the plaintiffs in error on December 27, 1893, the defendant in error cannot recover said property in this kind of a proceeding under the provisions of the Civil Code now in force; that said Petra Quiñones was entitled to and had a usufructuary interest in one-third of the property described in the complaint during her lifetime if defendant in error is the owner thereof (which is denied), and that she ceded all her right, title, and interest to the same to the predecessors in interest of the plaintiffs in error in the adjudication made of said property on June 24, 1893, and that said mother being still alive the defendant in error has no interest or right in the usufruct of said one-third interest in said estate at the present time, nor has he at any time heretofore had such right or interest, and that he is not entitled to the possession of the one-third undivided interest in said estate; that no division of the estate of the deceased Clemente Diaz y Gonzalez, father of the

defendant in error, has ever been made, and that Doña Petra Quiñones, the mother of defendant in error, still survives, and that as wife of said deceased Clemente Diaz y Gonzalez, she became a co-heir with the plaintiff (defendant in error), and that said farm has never become the sole property of the defendant in error, and that he has never been and is not at the present time entitled to the individual possession thereof in accordance with section 401 of the Civil Code now in force. The plaintiffs in error, in their said amended answer, further presented a counterclaim to the effect that their predecessors in interest were, on the 23d day of June, 1893, adjudicated the lands in controversy in a proceeding for the settlement, partition, and adjudication of the estate of the deceased Clemente Diaz y Gonzalez in payment of the sum of two thousand six hundred and thirty pesos of the money current in Porto Rico at that time, which said sum was due by the deceased Clemente Diaz y Gonzalez to their predecessors in interest, the firm of Mourraille & Martineau, and that said sum of money was a fair and just valuation of said property at that time, and that if defendant in error is entitled to recover said farm or any part thereof (which is denied) then the plaintiffs in error are entitled to recover from and against the defendant in error the said sum of money, with interest thereon at 6 per cent, from the first day of February, 1894, for which sum and the interest thereon judgment is prayed. This answer was amended on April 22, 1912, by the addition of the following allegation: that the predecessor in interest of the plaintiffs in error acquired the real estate described in the complaint in good faith, and that they had no knowledge of any defect in their title thereto, and that the same was duly inscribed in the registry of property of Humacao without any defects, and that these defendants (plaintiffs in error) have since they came into possession of said property by inheritance from their father continued in the possession of the said property in good faith and without knowledge of any defects therein

(if there be any defects in said title), and that on account of said possession in good faith they were entitled to the usufruct of said property until the date of the filing of this suit under articles 451 and 452 of the Civil Code in force at the date of the acquisition of said property, namely, 1894, and under sections 436, 453, and 454 of the Code now in force, and that the plaintiff (defendant in error) is not entitled to recover the rents and profits of said place prior to the date of the commencement of this suit (pp. 36-37 of the Record, folios 66-67).

The cause came on for trial before the court and a jury, and at the opening of the said trial the defendant in error admitted upon the record (p. 46 of the Record, folios 83-84) that the plaintiffs in error were entitled to the amount of their counterclaim, and also admitted that the defendant in error was entitled to but two-thirds of whatever sum the jury might find as the value of the rents and profits of the property in litigation, and that the other one-third would belong to the mother of the defendant in error in usufruct. The defendant in error thereupon presented his documentary evidence, consisting of the notarial act of protocolization of the partition proceedings, Exhibit A for plaintiff (Supplemental Record), and the record of the title in the office of the registrar of property of Humacao (pp. 56-31 of the Record, folios 93-98), and thereupon moved for the direction of a verdict in regard to the possession of the land, which direction the court thereupon gave as follows:

> "Gentlemen of the jury, you are directed to return as a part of the verdict which you will render, and when you do render your verdict then as of this date that the plaintiff in this case has a right of possession to the property which is the subject of this action;"

to the giving of which instruction plaintiffs in error duly excepted (p. 61 of the Record, folio 99).

The defendant in error then proceeded to introduce testimony as to the value of the rents and profits of the lands

in controversy during the term of the possession thereof by the plaintiffs in error and their predecessors in interest, to the introduction of which testimony objection was duly made and overruled and an exception to such ruling duly taken (p. 62 of the Record, folio 101).

Objections were also made during the course of the trial to the introduction of estimates of profits, on the ground that the same were too speculative, which objections were overruled and exceptions noted (pp. 63, 64 of the Record, folios 102, 104).

Certain instructions requested by the plaintiffs in error were refused by the court, to which refusal exceptions were duly taken (p. — of Supplemental Record).

These instructions so refused read as follows:

> "1. The jury is instructed that if from the testimony introduced it believes that the defendants have occupied the farm in question in good faith without interruption from the date that they took possession thereof to the date of the filing of this suit, without any knowledge of a defect in their title, then you should find that the plaintiff is not entitled to recover for the rents and profits of said farm prior to the date of the filing of the complaint herein."
>
> * * * * * * *
>
> "4. The jury is instructed that the plaintiff is only entitled to recover the rents and profits of the farm in question from the date upon which he arrived at his majority.
>
> "5. The jury is instructed that the evidence as to the probable production of the land sued for if the same had been planted to cane or dedicated to the raising of cattle is of such a speculative character that it would be impossible to arrive at any definite or accurate conclusion therefrom and that the same should be wholly disregarded."

The jury thereupon found a verdict for the defendant in error, adjudging that he was entitled to the possession of the tract of land in controversy and to the sum of $10,140.67

as damages for the detention thereof, and judgment having been entered on said verdict this writ of error is prosecuted for the reversal thereof.

Assignments of Error and Points Relied upon in the Argument.

First. The court erred in sustaining the demurrer to the amended answer of the plaintiffs in error (pp. 29-32 of the Record, folios 53-58).

Second. The court erred in directing a verdict in favor of the plaintiff (defendant in error) for the possession of the land in controversy (p. 61 of the Record, folio 99).

Third. The court erred in permitting evidence to be received by the jury, and in permitting the jury to find by its verdict that the defendant in error was entitled to the rents and profits of the lands in controversy during the term of their occupancy by the plaintiffs in error and their predecessors in interest. The court was also in error in refusing to instruct the jury that, if it believed that the plaintiffs in error had occupied the property in litigation in good faith without interruption from the date they took possession to the time this suit was filed without any knowledge of a defect in their title, then the defendant in error is not entitled to recover the rents and profits prior to the date of the filing of the complaint.

Fourth. The court erred in permitting the introduction of evidence of a speculative character as to the profits that might have been obtained from the lands in controversy during the period of the possession of the plaintiffs in error and their predecessors in interest (pp. 63, 64 of the Record, folios 102, 104), and that the court erred in refusing to instruct the jury to disregard such testimony (p. —, request for instructions No. 1, Supplemental Record).

Fifth. The court erred in refusing to instruct the jury that the defendant was only entitled to recover the rents and profits of the lands in controversy from the date upon which he attained his majority (p. —, request for instruction No. 5, Supplemental Record).

Point I.

The Demurrer to the Amended Answer Should Not Have Been Sustained.

The action of the trial court in sustaining the demurrer to the amended answer disposed of most of the main questions of law upon which the defendant in error rested his right to the recovery of the lands in controversy, and these plaintiffs in error their title to the property and their right to the possession thereof. A determination of this point in favor of the plaintiffs in error will render the decision of the other grounds for this writ of error unnecessary; therefore it merits first attention.

It should be noted that the defendant in error, in paragraph VIII of his reformed complaint (p. 2 of the Record, folio 3), alleges the defect in the title of the plaintiffs in error as follows:

> "That the only right, title and interest that the said firm V. Mourraille & Martineau had was the void and pretended title which they secured from the mother of the plaintiff, Doña Petra Quiñones y Rodriguez, who illegally, unjustly and contrary to law and without any authorization on account of necessities and needs, pretended to sell and transfer said property in payment of a small and insignificant debt, which the conjugal partnership, composed of herself and Clemente Diaz y Gonzalez, her husband, owed to the said firm."

The amended answer denied this allegation (paragraph VIII, p. 9 of the Record, folio 16) and set up as an affirmative defense the chain of events beginning with the death of

Clemente Diaz y Gonzalez and ending with the record in the office of the registrar of property of the adjudication of the property in question to the firm of V. Mourraille & Martineau, after the proceedings leading up to this adjudication had been duly approved by the proper legal authority of Porto Rico (pp. 10-11 of the Record, folios 17-20). It further alleges that the defendant in error cannot in Porto Rico bring his action in ejectment, when the defendants in the action hold under a recorded title, without first establishing the nullity of that title in a proper action (p. 10 of the Record, folio 17). It also alleges that as all the proceedings leading up to the protocolization and inscription of the adjudication of the lands in controversy had received the approval of the court of competent jurisdiction, such proceedings were not subject to collateral attack .(pp. 11-12 of the Record, folios 20-21), and it finally alleges that the necessity and utility of the sale of the property in question did, as a matter of fact, exist (p. 12 of the Record, folio 22).

The demurrer to this answer set up that the foregoing affirmative defenses do not state facts sufficient to constitute a defense to the action, and sets up certain other grounds which need not be considered, as the opinion of the trial court concerns itself only with this feature of the demurrer.

This opinion (pp. 29-32 of the Record, folios 54-58) expressly held that this action did not constitute a collateral attack on the proceedings of the Court of First Instance of Humacao because that court had no jurisdiction in the matter; that its adjudication was therefore a nullity. It further held that the remedy of the defendant in error was by an action in ejectment, and not by an action in equity to declare the adjudication a nullity.

These two propositions of law will first be considered in the order given:

> (*a*) *The action brought by the defendant in error is a collateral attack on the adjudication of a court of competent jurisdiction, and cannot therefore be maintained.*

It has been repeatedly held by the Supreme Court of the United States that, if the court approving the sale of property belonging to decedent's estates or to the estates of minors was vested by law with jurisdiction in such matters, mere irregularities in the course of those proceedings cannot be made the basis of a collateral attack upon the sale, and the title obtained at such a sale is an absolute defense to such a collateral attack.

Thaw *vs.* Falls, 136 U. S., 519.
Simmons *vs.* Saul, 138 U. S., 430.

It is unnecessary to cite any authority on the proposition that, if the Court of First Instance of Humacao had jurisdiction in the proceedings upon which plaintiffs in error's title is based, this action in ejectment constitutes a collateral and not a direct attack upon that court's action.

What, then, was the jurisdiction of the Courts of First Instance of Porto Rico in such matters?

The Courts of First Instance of Humacao existed prior to the "Compilation of the Organic Provision Concerning the Administration of Justice in the Colonial Possessions," which is to be found published in House of Representatives Document No. 1484, 60th Congress, 2d session, at page 1421.

The first section of this compilation (enacted in 1891) provides:

> "The territory of the Spanish colonial provinces shall be divided for judicial purposes into districts (districtos), subdistricts (partidos), and municipal districts (terminos municipales), with the territorial audiencias, the criminal audiencias, the courts of first instance and examination, and the municipal courts or those of justices of the peace, which at present exist.

"Island of Porto Rico.

"Territorial Audiencia of San Juan de Puerto Rico.

"Personnel.

"One presiding judge.
"One president of chamber.
"Four associate justices.
"One public prosecutor (fiscal).
"One assistant public prosecutor (teniente fiscal).
"One deputy assistant public prosecutor (abogado fiscal).
"One secretary of administration.

"Inferior Courts Which It Includes.

"San Juan de Puerto Rico (examining).
"San Juan de Puerto Rico (first instance).
"Humacao.
"Vega Baja.
"Cayey."

* * * * * * *

Articles 16 and 17 of the same compilation provide:

> "Art. 16. In the island of Porto Rico there shall be three audiencias—the territorial audiencia, which shall be situated in San Juan, and two criminal audiencias, one in Ponce and another in Mayaguez.
> "Art. 17. The first of the said audiencias * * * shall comprise, besides, three inferior courts of first instance and examination of the entrance category, to be situated in Humacao, Vega Baja, and Cayey."

By royal order of October 14, 1852, the Island of Vieques was attached to the Court of First Instance of Humacao.

By section 63 of the Code of Civil Procedure, which went into effect in Porto Rico on January 1, 1886, it is provided:

> "In order to determine competency, in cases other than those mentioned in the foregoing articles, the following rules shall apply:

* * * * * *

"5. In testamentary or intestate proceedings the judge of the last place of residence shall be competent.

* * * * * * *

"7. In proceedings relating to inheritances, their distribution, the disposition of legacies, universal and singular fidei commissa, or trust claims of testamentary and hereditary creditors, during the pendency of the testamentary or intestate proceedings, jurisdiction is vested in the judge competent to take cognizance of the last-named proceedings.

* * * * * * *

"17. In the selection and appointment of guardians of persons and property, and excuses from accepting them, jurisdiction is vested in the judge of the domicile of the father or mother whose death gives rise to the appointment, and, in their default, that of the minor or incapacitated person, or that of any of the places where they may have real estate.

"18. In the appointment and selection of guardians *ad litem*, jurisdiction is vested in the judge of the place where the minors or incapacited persons have their domicile or that of the place where the action is to be instituted.

* * * * * * *

"22. In proceedings for the reduction to public instruments of wills, codicils or bequests made verbally, or documents made without the intervention of a notary public, and in proceedings instituted for the opening of sealed wills or codicils, the judge of competent jurisdiction shall be that of the place where said documents may have been executed.

"23. In proceedings for the sale of property of minors or incapacitated persons, the competent judge shall be that of the place where the property may be situated, or that of the domicile of the persons to whom it belongs.

"Art. 64. The domicile of married women not legally separated from their husbands is that of their husbands.

"That of the children under the parental authority is the residence of their parents.

"That of minors or incapacitated persons subject to guardianship, is the residence of their guardians."

These provisions all refer to the Courts of First Instance, for the only other judges then existing were the municipal judges, which had but a limited jurisdiction, as more particularly appears from article 183 of the Compilation of the Organic Provisions for the Administration of Justice, *supra*, which article reads as follows:

"Municipal judges and justices of the peace shall have power:

"1. To take part in effecting acts of conciliation.

"2. To exercise a voluntary jurisdiction in the cases for which they are expressly authorized by law.

"3. To take cognizance in first instance and in oral trial of complaints which do not involve more than 200 pesos.

"4. To dictate preliminary rulings in testamentary matters or intestate successions, whenever it is proper according to law, in towns where there is no court of first instance, until such court takes cognizance of the same.

"By preliminary rulings for the purposes of this article shall be understood those the object of which is to place in security the property of inheritances and to provide for everything which admits of no delay.

"Whenever municipal judges or justices of the peace take part in these proceedings they shall immediately report the fact to the court of first instance, to which they shall forward copies of the proceedings they may have instituted.

"5. To make, in cases requiring a decision which cannot be delayed without causing damage to the interested parties, provisional rulings, reporting the matter to the Court of First Instance and sending the data at the same time.

"6. To carry out the auxiliary commissions which are entrusted to them by judges of first instances or by audiencias.

"7. To take cognizance of the other actions that are entrusted to them by law."

Article 63 of the Code of Civil Procedure, above referred to, contains certain express delegations of authority to the municipal judges (sections 5, 3d paragraph, 12, and 20 of that article).

Articles 1058, 1059, and 1060 of the Civil Code in force in Porto Rico at the time of these proceedings provided:

> "1058. Should the testator not have made any division, nor intrusted this power to another, if the heirs should be of age and should have the free administration of their property, they may distribute the property in the manner they may see fit.
>
> "1059. If the heirs of age should not agree as to the manner of making the division, they shall be free to enforce their rights in the manner prescribed by the law of civil procedure.
>
> "1060. If the minors should be subject to the parental authority, and are represented in the division by the father or the mother, neither judicial intervention nor approval shall be required."

From the last article, which is the only one directly treating of this matter, it is to be inferred that if the minor is not represented by the parent the judicial approval such as was obtained in this case is required.

Article 1049 of the Law of Civil Procedure then in force provided:

> "The liquidations and partitions of the inheritance made extrajudicially, even though made by accountants appointed by the testator, must be presented for judicial approval, providing that a minor, an incapacitated person, or an absentee whose residence is unknown, has any interest therein as an heir or legatee of an aliquot part thereof."

Articles 1076 to 1082, inclusive, of the Code of Civil Procedure then in force contain the provisions governing the manner in which these proceedings shall be presented to the court for its approval, the last-named section providing:

> "If within the period fixed in article 1078 the parties raise no objection to the plan of the auditor-umpire, or state their agreement with any other, the judge shall approve the same and shall order it to be recorded, upon payment of the amount due for the proper stamped paper."

The foregoing is the translation made by the War Department. It is submitted that the word "recorded" is an incorrect translation, and should be "protocolized," as a comparison with the Spanish text following will show:

> "Si dentro del término qua fija el art. 1078 last partes no hicieran oposición al proyecto del contador dirimente, ó manifestaren su conformidad con cualquiera otro, el Juez lo aprobará y mandará *protocolizarlo* con reintegro del papel sellado correspondiente."

It is further provided by article 1091 of the same Code of Civil Procedure:

> "After the partition has been definitely approved, there shall be delivered to each of the interested parties the part adjudged to him, together with the title deeds after the court clerk has entered thereupon a memorandum of the adjudication.
>
> "As soon as said partition has been recorded (protocolized), there shall be given to the participants requesting it a certified copy of their interest and their respective adjudication."

Articles 1026 to 1032, inclusive, and articles 1082 to 1087, inclusive, of the Civil Code of Porto Rico then in force conclusively show that creditors of the estate were entitled to be satisfied before any division could be made among the heirs. Had the claims of the creditors not been provided for they (the creditors) could have opposed any division of the estate until their claims were paid or secured (art. 1082, former Civil Code).

The appointment of the guardian (defensor) of the minor

was provided for by article 165 of the former civil code, which provided:

> "Whenever, in any matter, the father or mother may have an interest opposed to that of their children, not emancipated, a next friend (defensor) shall be appointed for the latter, to represent them in court or otherwise.
>
> "The judge, on petition of the father or of the mother, of the said minor, of the department of public prosecution, or of any other person qualified to appear in court, shall appoint, as the next friend (defensor) the relative of the minor to whom the legitimate guardianship should belong in such cases, and, in the absence of the latter, another relative or any other person."

The jurisdiction to designate the defendant in error the heir of his deceased father, to name his guardian or next friend (defensor), and to approve the partition proceedings of his father's estate was therefore vested in the Court of First Instance of Humacao, and in no other court.

> (*b*) *The remedy of the defendant in error was by a suit in equity to annul the record title of the plaintiffs in error and not by an action at law in the nature of ejectment. It was therefore a good defense to this action that the recorded title had not been annulled, and the demurrer to this defense should not have been sustained.*

The common-law action of ejectment has its nearest equivalent in the civil law in the "acción reivindicatoria," the essential elements of which action are: (1) That the property sued for be clearly described; (2) that the title thereto and its identity be proved, (3) and that the defendant be in possession thereof.

> Siervas de Maria *vs.* May, 17 P. R. Rep., 697, and decisions of Supreme Court of Spain cited therein.

The Supreme Court of Spain has repeatedly held that, where the defendants in an "acción reivindicatoria" hold the property in litigation under a registered title, this registered title must first be annulled by the proper action before the "acción reivindicatoria" can be brought, and that if such annulment of the title of the defendants has not been first obtained that the "acción reivindicatoria" must be dismissed. This doctrine has been sustained by the Supreme Court of Porto Rico, and in its decisions will be found the references to the Spanish decisions upon which its action is based.

Criado *vs.* Battistini, 3 P. R. Rep., 365.
Sucn. Blondet *vs.* Fantauzzi, 14 P. R. Rep., 302.

The courts of Porto Rico can give both legal and equitable relief in the same action; hence many cases of the "acción reivindicatoria" can be cited by the defendant in error where the plaintiff has obtained a judgment against a defendant holding under a recorded title, but in every such case it will be found that either (1) the declaration of the nullity of the defendant's title was a part of the relief prayed for in the complaint or (2) there was no dependence or relation between the title claimed by the plaintiff and that claimed by the defendant:

> "The legal principle that when the action of ejectment (acción reivindicatoria) is brought against persons in possession of the thing in controversy on the strength of a title which was thought to be valid, it is necessary that the nullity of this title be first asked for, is applicable only when the action arises from such nullity, but not when the right to bring an action of ejectment (acción reivindicatoria) is independent thereof. (Opinions of the Supreme Court of Spain of October 16, 1873, January 17, 1889, April 6, 1889, and February 13, 1892."
>
> The People *vs.* Dimas *et al.*, 18 P. R. Rep., 1019, 1041.

The right of action of the defendant in error herein, if any he has, arises from the alleged defects in the title inscribed in favor of these plaintiffs in error. If their title is declared invalid, he is entitled to relief; otherwise he is not.

The Civil Code of Porto Rico, as it existed prior to 1902 and as it still exists, uses the word "null" or "nulo" in the sense of both "void" and "voidable." Manresa, in his Commentaries of the Civil Code, in treating of this question in relation to the provisions of article 1300 of the Spanish Code (vol. 8, p. 766 *et seq.*) uses the words "inexistencia" (non-existance) and "nulidad" (nullity) as expressing the two ideas, and this distinction has been supported by the decision of the Supreme Court of Porto Rico in the case of *Ledesma et al. vs. Agrait et al.*, 19 P. R. Rep., 541. Following the legal principles established by articles 1310 to 1312 of the old code, which are re-enacted in sections 1277 to 1280 of the present code, both Manresa and the Supreme Court of Porto Rico arrive at the conclusion that if the contract, the validity of which is attacked, is susceptible of confirmation it is a voidable and not a void contract. In other words, that a contract existed; otherwise there would be nothing to confirm, as the confirmation presupposes the existence of something. If it did not exist, there is nothing to be confirmed. Manresa, in commenting upon article 164 of the old civil code, which requires judicial authorization in order that the parent may sell the property of the minor child, in which property the parent has any interest (Manresa, vol. 2, p. 49), discusses the rights of the child in case the parent shall have transferred property without such an authorization, and sustains the proposition that as such a transfer is based upon a contract it falls within the provisions of article 1300 (old code), which provides:

> "Contracts containing the requisites mentioned in article 1261 may be annulled, even when there should be no lesion to the contracting parties, whenever they contain any of the defects which invalidate them according to law."

It has been held by the Supreme Court of the United States that—

> "A State law may give a substantial right of such a character that where there is no impediment arising from the residence of the parties, the right may be enforced in the proper Federal tribunal whether it be a court of equity, of admiralty or of common law. The statute does not confer the jurisdiction. That exists already, and *it is invoked to give effect to the right by applying the appropriate remedy. This principle may be laid down as eziomatic in our national jurisprudence. A party forfeits nothing by going into a Federal tribunal. Jurisdiction having attached, his case is tried there upon the same principles, and its decision is governed by the same considerations, as if it had been brought in the proper State tribunal of the same locality.*"
>
> *Ex parte* McNiel, 13 Wall., 236, 243.

Applying this principle to the case at bar, it follows that, if in the local courts of Porto Rico the defendant in error could not maintain his "acción reivindicatoria" without either first establishing the invalidity of the recorded title of these plaintiffs in error or of joining the two actions in one, he cannot, simply by virtue of changing the forum, obtain the relief which the local courts would not grant him.

And it cannot be said that such actions could not be joined on the equity side of the District Court of the United States for Porto Rico. Such an action was maintained, and the decree therein was sustained by the Supreme Court of the United States in the case of *Ochoa vs. Hernandez y Morales*, 230 U. S., 139.

The demurrer to the amended answer of the plaintiffs in error, therefore, should not have been sustained.

Point II.

A Verdict in Favor of the Defendant in Error for the Possession of the Land in Controversy Should Not Have Been Directed.

It appears from the record (p. 61, folio 99) that upon the documentary evidence the court directed the jury to find by their verdict that the defendant in error was entitled to the possession of the land in controversy.

The documents before the court when this ruling was made were the protocolized partition proceedings (Plaintiff's Exhibit A, p. —, Supplemental Record), a copy of the entries in the office of the registrar of Humacao with regard to the lands in controversy (p. 56 of the Record, folios 93-98), and the instrument executed June 20, 1893, whereby Doña Petra Quiñones y Rodriguez, the mother, and Santos Diaz y Gonzalez, the guardian (defensor) of the minor, recognized the debts in favor of Ramon Aboy Benitez, and the latter assigned part of this credit to the firm of V. Mourraille (p. 47 of the Record, folios 84-93). As appears from the supplemental record (p. —) that certain other documents were submitted by the defendant in error, but the contents of these documents does not affect the points to be herein discussed.

From the documents the same facts set up by the plaintiffs in error in their amended answer appear, so that the same errors were made in directing a verdict as were made in sustaining the demurrer to these defenses. All that has been argued with regard to the errors committed in sustaining that demurrer, as set forth in the first point herein, applies equally to this point.

But in addition to these errors it is insisted that in directing a verdict for the defendant in error the other errors, which will now be discussed, were also committed:

(*a*) All the parties in interest not having joined as parties plaintiff, no verdict could have been directed in favor of the defendant in error.

The plaintiff in an action of ejectment must show a right to the possession of the property at the time of bringing his action.

Smith *et al. vs.* McCann, 24 How., 398.

The defendant in error alone could not bring this action under the decisions of the Supreme Court of Porto Rico, which hold that the "acción reivindicatoria" cannot be maintained by one of several heirs for the possession of the entire property:

"Heirs by force of law are:

"1. Legitimate children and descendants, with regard to their legitimate parents and ascendants.

"2. In the absence of the foregoing, the legitimate parents and ascendants, with regard to their legitimate children and descendants.

"3. The widower or widow, the natural children legally acknowledged, and the father or the mother of the latter, in the manner and to the extent established in articles 834, 835, 836, 837, 840, 841, 842, and 846."

Spanish Civil Code, art. 807.

This was the law in force at the time of the death of the father of the defendant in error.

Article 834, referred to in the article just quoted, provides:

"The widower or widow, who, on the death of his or her spouse, is not divorced, or should be so by the fault of the deceased spouse, shall have a right to a portion in usufruct equal to that corresponding by way of legal portion to each of the legitimate children or descendants who have not received any betterment.

"If one legitimate child or descendant only survives, the widower or widow shall have the usufruct

> of the third destined to the betterment, the former preserving the direct ownership until, on the death of the surviving spouse, the title is merged in him."

The rights of the mother of the defendant in error as usufructuary of one-third of the property in litigation were established by articles 467 and 471 *et seq.* of the Spanish Civil Code, which gave her the right to enjoy this portion of the property, with the sole obligation of preserving its form and substance.

The Supreme Court of Porto Rico has held in the case of *Trinidad et al. vs. Sucesión Trinidad,* 19 P. R. Rep., 616, that until a partition and adjudication of the estate of a decedent has been made the individual heirs cannot maintain an "acción reivindicatoria" for their individual interests.

The contention of the defendant in error that the only partition and adjudication of his father's estate was void leaves him in the position of attempting to maintain this suit on his own behalf alone, and not on behalf of his mother's interest therein, before any partition or adjudication of the estate has been made.

The court, therefore, erred in this regard in directing the verdict.

In this connection the admission of the defendant in error at the opening of the trial (p. 46 of the Record, folios 83-84) that he would only be entitled to two-thirds of what the jury might find as the value of the rents and profits, and that the other one-third would belong to his mother, is important:

> (*b*) The documentary evidence was sufficient to support a verdict for the plaintiffs in error.

This would seem to be a reiteration of the argument advanced in support of the first point of this argument, but it is based entirely on different grounds.

The defect in the title under which V. Mourraille & Martineau entered into possession of the property in litigation is

set up in the complaint herein as a conveyance by the mother, Petra Quiñones y Rodriguez, without any authorization on account of necessities and needs.

The instrument under which the said firm of V. Mourraille & Martineau acquired their title was the protocolized copy of the so-called partition proceedings executed by Petra Quiñones, Santos Diaz y Gonzalez, and the contador.

If this instrument be considered as a conveyance in the manner set up in the complaint, the mother alone could represent the child, for in such a conveyance their interests were not opposed. The conveyance by mother and child of the property reduced the total inheritance, and as the mother, under the provisions of law already cited, was entitled to one-third thereof in usufruct it was as much to her own interest as to the interest of the child that no portion of the property should be improperly transferred.

True, such a conveyance by the mother would require authorization by the court on account of necessity and needs, but, according to the decision of the *Dirección General de Registros of February 9, 1887,* the approval by the court after the act was equivalent to the authorization.

There can be no question as to the necessity and utility of the transfer in question. That fully appears from the documentary evidence on which the direction of the verdict was based. There can be no question, either, that the assessed value of the property was fair. It was sold to V. Mourraille & Martineau at the rate of 20 pesos per acre, and the testimony of the witnesses examined on the question of the value of the rents and profits stated that the value of these lands in 1893, when the sale was made, was from 20 to 25 pesos, and their testimony is uncontradicted (p. 72 of the Record, folio 118; also p. 73 of the Record, folio 121). There is absolutely no evidence to sustain the allegation of the complaint that the property was sold and transferred in payment of an insignificant debt; but, on the contrary, V. Mourraille & Martineau took the property for the assessed value thereof of 20 pesos per cuerda, which

exactly equaled their claim, when, as appears by the record of the registrar (p. 58 of the Record, folio 95), it was subject to a lien of 1,200 pesos. As already stated at length, these creditors could have compelled the estate to settle with them in full, and, if necessary, could have, by legal proceedings to enforce their claim against the estate, increased the expense by the addition of court costs. Instead they relied upon the conveyance to them which had received the sanction of the proper tribunal, and that conveyance was recorded in their favor, without objection, by a registrar, upon whom was imposed the quasi-judicial function of passing upon the validity of the conveyances presented to him for inscription and the duty to reject those which lacked the necessary formalities. (See arts. 18 and 19 of the Mortgage Law.)

Therefore, considering the transfer to V. Mourraille & Martineau, in the manner in which the complaint herein treats it, as a conveyance by the mother, the necessary formalities to render it a valid transfer of the minor's title were fully complied with, on the face of the documentary evidence of the defendant in error, and the direction of a verdict in his favor was error.

(c) The evidence did not show that the defendant in error was entitled to the possession of the entire property.

As already pointed out, the defendant in error was not the only person entitled to a share in the property in controversy. The mother, Petra Quiñones y Rodriguez, was entitled to the use of one-third thereof. It is alleged in the final amended answer of the plaintiffs in error (p. 34 of the Record, folio 62) that at the time of the filing of that answer she was still alive, and there was no evidence introduced to the contrary. The admission of the defendant in error, already alluded to, that the defendant in error could only recover two-thirds of the rents and profits claimed, and that the other third belonged to the mother, supports the

allegation. Being entitled to the use of one-third of this piece of property, it is difficult to conceive how the defendant in error could be entitled to the possession of the entire property before her death.

If it be alleged that the plaintiffs in error have succeeded to whatever rights the mother had in this property by virtue of the execution by her of the alleged void transfer, then the defendant in error would have been entitled, if the transfer as to him was void and not simply voidable, to the possession of two-thirds, and the plaintiffs in error to the use of the other third until the mother's death.

For any or all of the foregoing reasons the direction of the verdict as given was erroneous.

Point III.

In the Absence of Evidence of Bad Faith in the Possession of the Plaintiffs in Error, no Evidence as to Rents and Profits During That Possession Should Have Been Introduced, and the Jury Should Have Been Instructed That the Defendant in Error Was Not Entitled to Recover Them.

The success of an action in ejectment (acción reivindicatoria) under the laws of Porto Rico does not necessarily imply in every case payment for the products thereof and an indemnization of the damages caused thereby, but such obligation on the part of the possessor who has been defeated in the action depends upon the circumstances attending the possession.

> "The judgment appealed from could hold, as it did, that the plaintiff was entitled to the recovery of the tracts of land in dispute, and hold that the return of the products and the payment of indemnity for damages could not be required, because to hold

otherwise would involve the presumption of bad faith in the possession of the defendant, which was not proved."

Criado *vs.* Battistini, 3 P. R. Rep., 365, 383.

A complaint in ejectment (reivindicación) which does not allege that the purchaser of the property in litigation acquired and had possession of the same in bad faith, good faith in said acquisition and possession will be presumed.

Teillard *vs.* Teillard, 18 P. R. Rep., 546.

These cases apply the principles of law laid down in articles 433, 434, 451, 452, and 453 of the old Civil Code, re-enacted in sections 436, 437, 453, 454, and 455 of the Civil Code now in force, which provide:

"433 (436). Any person who is not aware that there is in his title or in the manner of acquiring it, any flaw invalidating the same, shall be considered a possessor in good faith.

"Possessors aware thereof are considered possessors in bad faith.

"434 (437). Good faith is always presumed, and any person alleging bad faith on the part of the possessor is obliged to prove it.

"451 (453). The fruits collected in good faith by a possessor during the time the possession is not legally interrupted become his own.

"Natural and industrial fruits are understood as collected from the moment they are gathered or harvested.

"Civil fruits are considered as daily proceeds and belong to the possessor in good faith in this proportion.

"452 (454). If, at the date on which good faith ceases, some natural or industrial fruits are ungathered, the possessor shall have a right to recover the expenses he may have incurred in their production, and furthermore, to a part of the net proceeds of the crop in proportion to the time of his possession.

"The expenses shall be distributed pro rata, in the same manner, between the two possessors.

"The owner of the thing may, if he desires, grant to the possessor, in good faith, the right to finish the cultivation and collection of the growing fruits as an indemnity for the part of the cost of cultivation and net proceeds belonging to him; the possessor in good faith, who, for any reason whatsoever may not desire to accept this concession shall lose the right to be indemnified in any other manner.

"453 (455). Necessary expenses are refunded to every possessor, but only the possessor in good faith may retain the thing until they are repaid to him.

"Useful expenses are paid the possessor in good faith with the same right of retention, the person who has defeated him in his possession having the option of refunding the amount of the expenses or paying him the increase in value the thing has acquired by reason thereof."

It is also provided by article 442 of the old Code (444 of the new Code):

"A person succeeding by an hereditary title shall not suffer the consequences of a faulty possession of the testator, unless it is proven that he had knowledge of the defects affecting it; but the effects of the possession in good faith shall benefit him only from the date of the death of the testator."

Manresa (vol. 6, pp. 269 *et seq.*) discusses the rights of a possessor in good faith, and upon the strength of the decisions of the Supreme Court of Spain of January 28, 1896, December 7, 1899, and July 11, 1903, reaches the conclusion that possession in good faith continues up to the time of the beginning of an action to establish an adverse title.

Applying these principles to the case at bar, the error in allowing the introduction of evidence as to rents and profits during the adverse possession of the plaintiffs in error and of their predecessors in interest is evident. No bad faith was alleged on the part of any of these parties, nor was there any attempt made to prove it. It was, therefore, under art. 434 (437) to be presumed, and holding as heirs of their father

in good faith the plaintiffs in error could not be held to respond for the rents and profits prior to the beginning of the action.

These principles of the civil law have been considered in the case of *Green vs. Biddle,* 8 Wheat., 1.

The refusal to give the requested instruction 1 (p. — Supplemental Record) was also error. This instruction reads:

> "The jury is instructed that if from the testimony introduced it believes that the defendants have occupied the farm in question in good faith without interruption from the date that they took possession to the date of the filing of this suit, without any knowledge of a defect in their title, then you should find that the plaintiff is not entitled to recover for the rents and profits of said farm prior to the date of the filing of the complaint herein."

It is submitted that the instruction as requested was a proper statement of the law of real property existing in Porto Rico, and the jury should have been so instructed.

Point IV.

Evidence of a Speculative Character as to the Possible Production of the Land in Controversy Should Not Have Been Admitted, and the Jury Should Have Been Instructed to Disregard It.

The first witness called on behalf of the defendant in error on the question of the rents and profits, after testifying to the rental value of lands in the Island of Vieques during the entire term of the possession of the plaintiffs in error and of their predecessors in interest, was asked the following question:

> "Now, take the same land, and for the first period, from 1894 to 1900, tell us, if you can estimate, what would have been the profits of that land planted in cane, if planted by the owner—the net profits per acre per year" (p. 63 of the Record, folio 102).

To this question the plaintiffs in error objected on the ground that any estimate of profits in the manner indicated would be too speculative, and the objection being overruled, an exception was taken.

> "In trespass for mesne profits compensation is the proper measure of damages; which is generally defined to be the fair rental value of the land for the time defendant was in wrongful possession, not exceeding the period fixed by the statute of limitations before the action is brought.'
>
> 15 Cyc., 205, and cases cited.

See also to the same effect:

New Orleans *vs.* Gaines, 15 Wall., 624.
New Orleans *vs.* Christmas, 131 U. S., 191.
Credle *et al. vs.* Ayers, 48 L. R. A., 751, 752.

The question objected to had nothing to do with the rental value of the lands. The planting of cane by the owner presupposes the necessary capital to engage in the business. There was absolutely no testimony to show that anybody had ever tried to plant cane on these lands or any part of them, and to attempt to estimate what they might produce, even if such testimony were admissible, would be to substitute conjecture for certainty.

The same objection applies to the action of the trial court in allowing the same witness, over the objection of the plaintiffs in error, to testify as to the value of cattle and the profits that might have been obtained from the land if the owner had gone into the business of raising cattle (p. 64 of the Record, folio 104).

The fifth request for instruction to the jury, which reads (p. —, Supplemental Record):

> "The jury is instructed that the evidence as to the probable production of the land sued for if the same had been planted to cane or dedicated to the raising of cattle is of such a speculative character that it

> would be impossible to arrive at any definite or accurate conclusion therefrom and that the same should be wholly disregarded,

was, therefore, a proper request and should not have been refused.

Point V.

The Defendant in Error Was Not Entitled to Any Rents and Profits Prior to the Date of Attaining His Majority.

Under the provisions of the Civil Code of Porto Rico (secs. 159 to 163 of the old Code; secs. 224 to 228 Code now in force) the father, or in the event of his death, the mother, is the legal administrator of the property of the children who are under their authority, and the ownership and usufruct of the property of the child is vested in the parent.

It is also provided by article 467 of the old Civil Code (sec. 469, present Code):

> "Usufruct gives a right to enjoy another's property under the obligation of preserving its form and substance unless the instrument creating it or the law otherwise permits."

The rights of the usufructuary are defined by articles 471 *et seq.* of the old Civil Code (arts. 471 *et seq.* new Code), the first of these articles providing:

> "The usufructuary shall be entitled to receive all the natural, industrial, and civil fruits, of the property in usufruct. With regard to the treasures which may be found on the estate, he shall be deemed a stranger."

Article 473 (both codes) provides:

> "If the usufructuary has leased the lands or estates given him in usufruct, and the latter should expire before the lease, he or his heirs and successors shall only receive the proportionate part of the rent, to be paid by the lessee."

Under these provisions of law, taken in connection with articles 167 and 314 of the old Code (secs. 233 and 302 present Code), which provides when the minor becomes emancipated that he is no longer under the parental authority, and that such emancipation becomes effective upon his attaining his majority, the person entitled to receive the rents and profits of the lands in question, if such right existed, during all of the time of the possession of the plaintiffs in error and their predecessors in interest, was not the defendant in error, alone. Up to the date of his emancipation, his mother, Petra Quiñones, was entitled to these rents and profits, unless her transfer to V. Mourraille & Martineau was effective as a transfer of that interest to them, in which case they would have belonged to these plaintiffs in error. So that in either event the defendant in error was only entitled to recover the rents and profits, if entitled to any at all, from the date of his emancipation from the parental authority.

It was therefore proper for the plaintiffs in error to request the giving of their fourth request for instructions, which was worded as follows:

> "The jury is instructed that the plaintiff is only entitled to recover the rents and profits of the farm in question from the date upon which he arrived at his majority."

The refusal of this request was error.

Upon the foregoing propositions the case is respectfully submitted, with the prayer that the judgment of the District Court of the United States for Porto Rico may be reversed, set aside, and held for naught.

Respectfully submitted,

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JOSÉ R. F. SAVAGE,
Of Counsel.

Service of a copy of the foregoing brief is admitted this 19th day of February, 1915.

F. H. DEXTER AND
JOSEPH ANDERSON, JR.,
Attorneys for Defendant in Error.

[Endorsed:] Supreme Court of the United States. Nancy Neron Longpre, Gustavo Mourraille *et al.*, plaintiffs in error, *versus* Clemente Diaz y Quiñones, defendant in error. Brief and argument for plaintiffs in error. Hector H. Scoville, attorney for plaintiffs in error; José R. F. Savage, of counsel.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 51.

NANCY NERON LONGPRÉ, GUSTAVO MOURRAILLE, ET AL., PLAINTIFFS IN ERROR,

vs.

CLEMENTE DIAZ Y QUIÑONES, DEFENDANT IN ERROR.

BRIEF IN BEHALF OF THE DEFENDANT IN ERROR.

JOSEPH ANDERSON, JR.,
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F. H. DEXTER,
Of Counsel.

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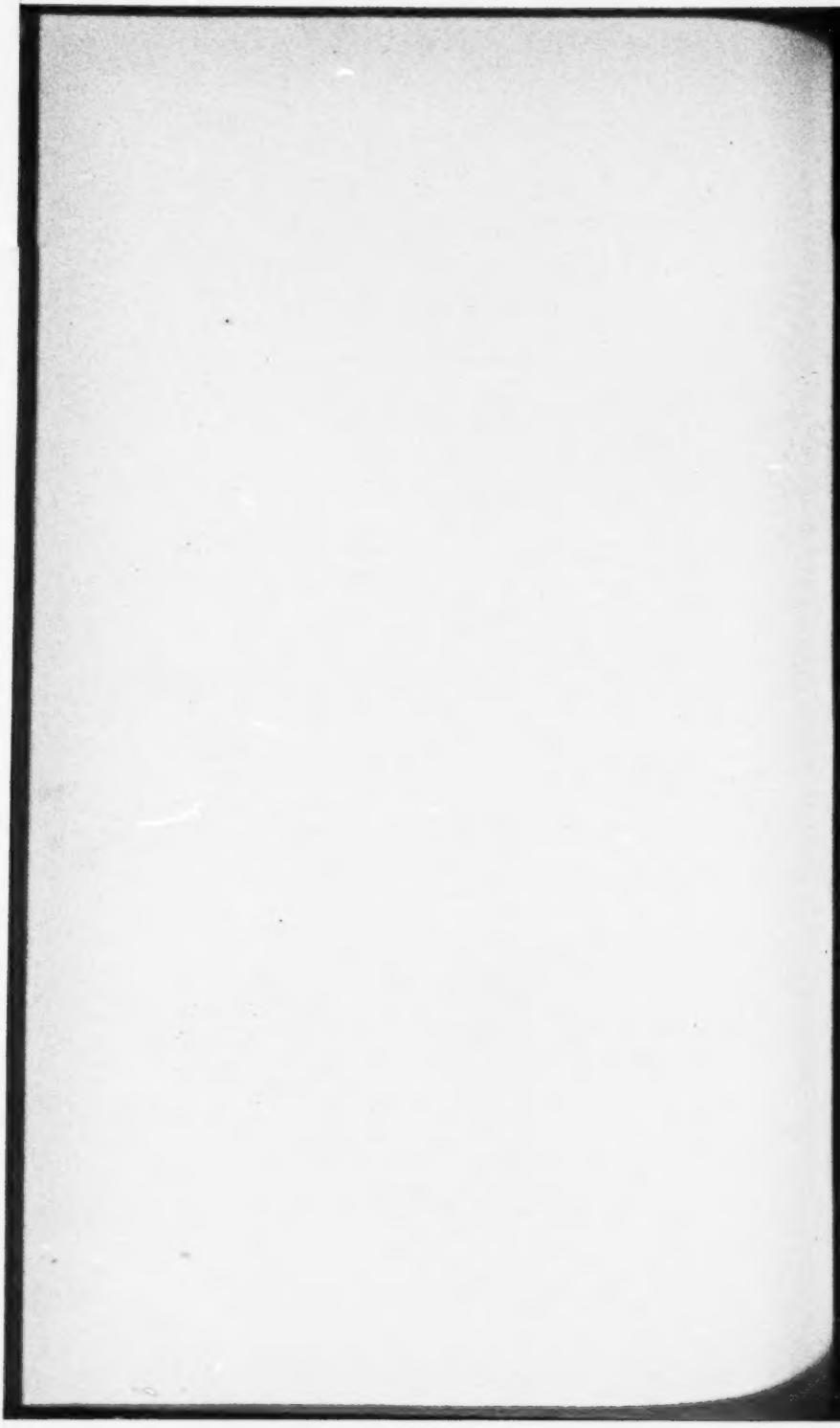

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List of Cases Cited.

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BRIEF IN BEHALF OF DEFENDANT IN ERROR.

Statement of the Case.

This action was originally brought in the District Court for the Judicial District of Humacao, Porto Rico, by the defendant in error, Clemente Diaz y Quiñones, against the plaintiffs in error, Nancy Lerón Longpré, Gustavo Mourraille, Emilia Mourraille, Love Mourraille, Matilde Mourraille, and Victor Mourraille, for the recovery of a certain property, situated in the Island of Vieques, Porto Rico, said to contain 131.50 cuerdas, and described in the complaint.

This action was filed on December 16, 1910, and on December 23, 1910, was removed to the District Court of the

United States for Porto Rico by the defendants (plaintiffs in error). Thereafter the plaintiff (defendant in error) filed a motion in the District Court of the United States for Porto Rico to remand to the District Court for the Judicial District of Humacao the said action, which motion to remand was hotly contested by the defendants (plaintiffs in error), with the result that the motion to remand was refused and the case was thereafter heard and determined in the District Court of the United States for Porto Rico (Record, page 30).

The action as originally filed in the District Court for the Judicial District of Humacao was what is known in the Spanish law as a "reinvindicatory action," and was brought under the provisions of chapter 2 of the Code of Civil Procedure of Porto Rico, entitled "Actions to Determine Conflicting Claims to Real Property, and Other Provisions Relating to Actions Concerning Real Estate," and especially under section 282 of said Code, which provides:

> "An action may be brought by any person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim."

Upon the filing of the reformed complaint, upon removal to the District Court of the United States for Porto Rico, which reformed complaint was in the form of an action in ejectment, an answer was filed by the defendant (plaintiffs in error) which set up certain technical defenses, which being deemed insufficient by the plaintiff (defendant in error) were demurred to (Record, page 7), with the result that an amended answer was filed by the defendants (plaintiffs in error) (Record, page 8), which amended answer was also demurred to, and after argument and the filing of briefs said demurrer was sustained and the defendants (plaintiffs in error) were granted time further to amend their answer (Record, page 29), which they did on April 22, 1912, to which amended answer a counter-claim was

added (Record, pages 32-35), and the plaintiff (defendant in error) having been allowed to amend his complaint by interlineation setting forth the exact age of the plaintiff, and the defendants (plaintiffs in error) having further amended their answer by the addition of paragraph 5 (Record, page 36), the cause proceeded to trial.

The court having indicated by its opinion upon the demurrer to the amended answer that it considered the defenses set forth in said amended answer insufficient, and the documents upon which both parties relied having been introduced, and the court being satisfied of their authenticity and relative value, and in accordance with its opinion upon the demurrer to the amended answer, and upon motion of plaintiff (defendant in error), directed a verdict in behalf of the plaintiff (defendant in error) upon the main issue of the case, to wit, as to the right of possession of plaintiff (defendant in error) and his title to the property, leaving to the jury under the evidence and the court's instructions the question of damages or mesne profits, the jury determining, by direction of the court, that the plaintiff (defendant in error) was entitled to the possession of the land in controversy, and assessed his damages in the sum of $10,140.67 for the retention thereof, upon which verdict judgment was rendered (Record, page 38).

Whereupon the defendants (plaintiffs in error) sued out a writ of error to this court.

The plaintiff (defendant in error), in bringing his action in the District Court for the Judicial District of Humacao, set forth in his complaint, in substance, the following:

Statement of Facts.

Clemente Diaz y Gonzalez, father of plaintiff (defendant in error), died intestate in the Island of Vieques, Porto Rico, on April 30, 1890, leaving as his only heir his son, Clemente Diaz y Quiñones, born on or about December 11, 1890, of Petra Quiñones y Rodriguez, lawful wife of said Clemente Diaz y Gonzalez.

On August 5, 1892, the said Clemente Diaz y Quiñones, plaintiff (defendant in error), was declared by the judge of the Court of First Instance, which at that date administered justice in the town of Humacao, after a proper proceeding, the sole and universal heir of the said deceased Clemente Diaz y Gonzalez.

On July 24, 1893, the said widow, mother of plaintiff (defendant in error), Petra Quiñones y Rodriguez, together with one Santos Diaz y Gonzalez, in his capacity as "defensor judicial" (*guardian ad litem*), proceeded to carry out what is called in the Spanish law "partition proceedings" of the property left by the said Clemente Diaz y Gonzalez. These "operaciones divisarias" were set forth in a notarial instrument after carrying out certain legal formalities in the notarial office of Leandro Lara y Tomé in the said Vieques, and thereafter were approved by the judge of the Court of First Instance of said town of Humacao.

The Courts of First Instance of the Island of Porto Rico became, upon the reform of the judiciary, in the year 1898, the District Courts of Porto Rico, with three judges, and upon the further reconstruction of the courts in 1904 became the District Courts of Porto Rico with one judge (as they exist at present), and thus the District Court for the Judicial District of Humacao is the direct successor of the Court of First Instance of Humacao, which existed at the time the proceedings above referred to took place, and from which court this cause was removed by the defendants (plaintiffs in error) to the District Court of the United States for Porto Rico.

Among the properties left by the deceased Clemente Diaz y Gonzalez there was the farm, which is described in the complaint and which is the object of the present suit. This farm was part of the separate estate of the deceased Clemente Diaz y Gonzalez, having been his property prior to his marriage, and in no manner was it a part of the ganancial or conjugal property of the conjugal partnership existing between himself and wife, Petra Quiñones y Rodriguez, and passed upon his death to his only son and heir, in the following manner:

Two-thirds (⅔) in full dominion and one-third (⅓) in "nuda propiedad," the *usufruct* of said one-third part being for his mother, the said Petra Quiñones y Rodriguez.

In the partition proceedings above mentioned certain credits against the deceased Clemente Diaz y Gonzalez, to the amount of 2,630 pesos (approximately $1,315 U. S. currency), were recognized, and for the payment of these credits the entire farm, the object of this suit, was alienated and transferred to "V. Mourraille y Martineau." an agricultural and stock-raising partnership established in the Island of Vieques. The recognition of the debts was brought about by the widow, Petra Quiñones y Rodriguez, and Santos Diaz Gonzales, "defensor" of the plaintiff (defendant in error), on their own and sole authority, without the necessary and proper "juicio de testamentaria" (probate proceedings). The alienation of said property was carried into effect without the previous judicial authority or the judicial authorization on the grounds of "need and necessity."

The partnership "V. Mourraille y Martineau," of which firm Victor Mourraille was a member, predecessor of defendants (plaintiffs in error) well knew that the plaintiff (defendant in error) was the lawful owner of the farm in question, and that neither Petra Quiñones y Rodriguez nor Santos Diaz Gonzalez were able legally to transfer the dominion (ownership) of the said property. Said firm also knew that the legal requirements had not been fulfilled, to wit: the probate proceedings and the authorization of the

court after the "need and necessity" for the sale had been shown.

The said partnership "V. Mourraille y Martineau" was dissolved, and upon its dissolution the property in question was transferred to V. Mourraille, and upon the latter's death to the defendants (plaintiffs in error), his only heirs, who are today in possession of the said property.

Clements Diaz y Gonzalez, father of plaintiff (defendant in error), had already inscribed in the registry of property the ownership of the said farm before it was inscribed in the name of the defendants (plaintiffs in error) and before it was inscribed in the name of their progenitor, V. Mourraille, and before it had been inscribed in the name of the partnership "V. Mourraile y Martineau."

The property, object of this suit, is worth approximately $20,000, and the plaintiff (defendant in error) had been deprived of the possession and usufruct of it at the time of the filing of his complaint for about sixteen years and eight months (16 years and 8 months) and thus had failed to receive as rents and profits a sum which would have amounted approximately, as he alleged, to forty-five thousand dollars ($45,000).

Upon the above statement of facts the plaintiff (defendant in error) filed his complaint, as has been set forth, and from the answer and the documents presented the following facts, which, although perhaps not directly admitted, are not denied and are conclusively proved, and which may be stated as follows:

> (1.) That the District Court of the United States for Porto Rico had jurisdiction on account of the amount involved and the citizenship of the parties defendant.
>
> (2.) That the plaintiff (defendant in error) was an emancipated minor at the time of the commencement of this suit, but arrived at full legal age prior to the decree.

(3.) That the case was removed to the District Court of the United States for Porto Rico from the District Court for the Judicial District of Humacao by the defendants (plaintiffs in error), and that motion to remand, which was warmly contested and fully argued, was denied.

(4.) That the father of plaintiff (defendant in error), Clemente Diaz y Gonzalez, was the owner of the property in litigation *as part of his separate estate* at the time of his death.

(5.) That the plaintiff (defendant in error) is the sole and universal heir of his father, having been so declared by the Court of First Instance of Humacao on August 5, 1892, and as such heir the inheritor of his father's property, the father having died intestate, subject only to the widow's "usufruct" or life interest in one-third of the property that he left, the "dominio" or ownership passing to his sole heir by force of law.

(6.) That by some sort of a proceeding, which will hereafter be further discussed, the property passed to the firm of "V. Mourraille y Martineau" in February, 1894; that this firm was afterwards dissolved, and the possession of the property passed by said dissolution of the said firm to V. Mourraille, the senior partner.

(7.) That upon the death of V. Mourraille the possession passed to his heirs, who are the defendants (plaintiffs in error), citizens of the Republic of France, residents of Vieques.

And at once there arose the following

Points of Law.

(1.) That the action or proceeding was not in the proper court, for the reason—as alleged by the defendants (plaintiffs in error)—that the decree of the Court of First Instance of Humacao was not subject to collateral attack.

(2.) That even if it were in the proper court it should have been—as alleged by the defendants (plaintiffs in error)—in equity and not at law.

(3.) That the right of action, if it ever existed, had proscribed.

(4.) Whether or not the proceeding upon which the predecessors of defendants (plaintiffs in error) based their title were sufficient to pass title.

This last point (4) presents seven subsidiary considerations:

(*a.*) Whether or not the widow of the deceased Clemente Diaz y Gonzalez, having interests adverse to her son, together with the "defensor judicial" (guardian *ad litem*) Santos Diaz Gonzalez, upon their own sole authority, recognized the debts against the deceased's estate without complying with the legal requirements of probate proceedings.

(*b.*) Whether or not the payment of said debts by the transfer of the infant son's property should be considered a division of the state or an alienation and sale of the property in litigation, and if the latter whether it was lawful to neglect all of the requirements and legal formalities provided by law for the alienation of property of minors and incapables.

(*c.*) Whether or not the approval, *after the act*, by a court of so-called "operaciones divisorias" cures all of the illegalities of the proceedings, or on the contrary, such acts, being prohibited by law, and the court without power or jurisdiction to approve the said "acts" (operations), are they not open to attack?

(*d.*) Whether it were possible to transfer the "dominio" of the property direct from the deceased to the creditors without its first passing to his heir, the plaintiff (defendant in error) (in the registry of property), and after being inscribed in the registry in his name.

(*e.*) Whether or not legal consent could have been given by the infant heir, plaintiff (defendant in error) for the alienation, the infant heir not being represented by any of the persons that the law requires for such representation.

(*f.*) Whether or not the "defensor judicial" of an infant has any further right or authority than that of taking inventory, appraisement, liquidation and division of hereditary property?

(*g.*) Whether or not the defendants (plaintiffs in

error) can be considered possessors in good faith (*de buena fe*) under the Spanish and Porto Rican law, when they and their predecessors in interest well knew the legal status of the property and that the plaintiff (defendant in error) was an infant and under the rigorous protection of the law provided for infants.

In reference to the first point of law, namely, that the action or proceeding was not in the proper court, because the decree of the Court of First Instance of Humacao was not subject to collateral attack, we desire first to call the attention of the court to the fact that this action was begun in the Humacao District Court, a court which is the legal successor to the Court of First Instance of Humacao, which took such action as was originally taken in this matter. (See brief of plaintiffs in error, folios 18-20, inclusive, printed brief, pages — —.) It was removed to the District Court of the United States for Porto Rico by the plaintiffs in error and a motion to remand was opposed by plaintiffs in error (Record, page 30), and we think, therefore, that the defendants (plaintiffs in error) are estopped from denying that the District Court of the United States for Porto Rico, to which it was removed, had jurisdiction, even were it an action to declare the nullity of a decree of the Court of First Instance of Humacao, which it is not.

Cowley *vs.* No. Pac. R. R., 159 U. S., 571.
Baggs *vs.* Martin, 179 U. S., 206.
Bushnell *vs.* Kennedy, 76 U. S., 387.

But even if the defendants (plaintiffs in error) were not estopped, we do not think that this is a case where the doctrine of collateral attack would apply; it falls rather within the exceptions to the rule as to collateral attack, for, as we shall show hereafter, the Court of First Instance of Humacao, in so far as its approval was a decree, was entirely without jurisdiction, not as to the persons or things involved, but

entirely without jurisdiction to do what it did. Plaintiff (defendant in error) claimed that what was done by the mother and the guardian *ad litem* of the plaintiff was absolutely void; that it was done without any legal right and contrary to law; as void as if a court should imprison for life a person accused of petty larceny; and when a court attempts to do anything that is void, that it is not authorized to do, that has no element in it of mistake or abuse of discretion, it is done without jurisdiction, is void, and can be attacked collaterally.

When the judgment is void for lack of authority in the judge, it may be collaterally attacked:

Rich *vs.* Mentz, 134 U. S., 642; 23 Cyc. 1075, Note 5.
Hatch *vs.* Ferguson, 68 Fed. (C. C. A.), 43.
Same case and Notes, 33 L. R. A., 759.
United States *vs.* Walker, 109 U. S., 258.

Windsor *vs.* MacVeigh, 93 U. S., 274, where the court, commenting upon the doctrine of collateral attack, states that the proposition is *only* correct:

> "When the court proceeds, after acquiring jurisdiction of the cause, according to established modes governing the class to which the case belongs, and does not transcend, in the extent or character of its judgment, the law which is applicable to it."
> Board of Com. *vs.* Gwin, 22 L. R. A., 402.

But what the court did in this matter was not a decree; the mother of the plaintiff (defendant in error) and his guardian *ad litem* met without any authority, in pretending to partition the estate, and before the debts had been proven adjudicated to a creditor, who it was alleged had acquired certain debts against the father's estate, the property of his minor son in payment of those debts. It does not appear that the creditor paid any consideration for the credit that he obtained; it does not appear that he proved his claim;

the only fact that appears is that the widow appeared at court in a so-called "conciliacion" proceeding and confessed one of the small debts, but whether or not the debts were proper, whether or not they had been proven, or whether or not they were legal, it was entirely illegal for the mother to pay them, as she pretended to do, by an adjudication of the son's property to the creditor. How this could have been done, and how it should have been done, we shall show upon the discussion of the law involved in such a proceeding. Furthermore, it appears that the debts which were paid by this adjudication of the property of the infant were conjugal debts; they should not have been paid out of the separate estate of the husband until the conjugal property was found insufficient. It is claimed that the mother in doing what she did was attempting to relieve the conjugal property at the expense of the separate estate of her husband, which passed by force of law to the son.

Plaintiffs in error further claim that this action was filed in the law side of the court, because plaintiff (defendant in error) did not want to do equity; that defendant in error wanted to recover the property without offering to return the so-called consideration. That was adjusted by admitting defendants' (plaintiffs in error) counterclaim, which was filed together with their amended answer and taken care of by the court.

In regard to the second point of law, to wit: that even if this suit were in the proper court it should have been in equity and not in law, we shall consider it from two standpoints:

(*a.*) Jurisdiction in equity in Federal courts.
(*b.*) Under what circumstances a reinvindicatory (ejectment) proceeding can be brought under the law and decisions of Porto Rico.

The defendants (plaintiffs in error) have overlooked the main point, and that is, that in most of the States and in

Porto Rico the distinction in the procedure in suits at law and in equity has been abolished. Not so in the Federal courts, and for constitutional reasons. The Constitution says that in suits at common law involving more than a certain amount rights to trial by jury shall be preserved. The Federal courts are very strict in construing this constitutional requirement. Furthermore, by statute a suit in equity cannot be brought when there is a complete and adequate remedy by law.

Plaintiff (defendant in error) claims that he has the legal title; he is out of possession; before he can bring an action to quiet title he must bring an action at law to recover the possession.

Lasacagre *vs.* Chapins, 144 U. S., 119.
Ellis *vs.* Davis, 108 U. S., 485.
Hibb *vs.* Babbin, 19 Howard, 271.
Whitehead *vs.* Shattuck, 138 U. S., 151.

The question can no longer be considered an open one in Federal courts. The matter has been so frequently adjudicated by this court and inferior Federal courts that citations could be multiplied almost without end.

In Pomeroy, Equitable Remedies, volume 2, sections 724 ff., the distinction is ably discussed and a large number of citations given.

What the defendants (plaintiffs in error) will doubtless refer to in their brief as a rule of property in Porto Rico, and quote many cases to sustain, is merely a rule of procedure in the local courts, and not a question of property right; but such a rule of procedure, if followed in the Federal courts, would at once raise the question of the constitutional requirement that a defendant in possession would have the right to have his right of possession determined at law by a jury. The whole subject is well discussed in an article in 73 Central Law Journal, No. 12, page 204, entitled "Law and Equity in the Federal Courts."

Plaintiffs in error will probably argue from the decisions in—

Blondet *vs.* Fantauzzi, 14 P. R. R., 302.
Amy *vs.* Amy, 15 P. R. R., 387.
Velilla *vs.* Piza, 17 P. R. R., 1069.
Cruz *vs.* Ortiz, 17 P. R. R., 1134.
Davila *vs.* Davila, 18 P. R. R., 112.
Trinidad *vs.* Trinidad, 19 P. R. R., 616.

But all of these decisions hold, in effect, that the title of inheritance is not sufficient for a reinvindicatory action (ejectment) to claim a certain definite portion of the estate when the defect in the title grows out of some act of the predecessor in title; but when the defect is produced by the heir himself, acting through presumptive representatives, then the reinvindicatory action will lie, for he acts not as an heir but presumably in his own right; and these decisions further hold, taken altogether, that the title of inheritance *is* sufficient when *all* of the heirs act together for the entire estate, or when there is only *one* and he acts for himself, as in this case. This is clearly set forth in the concurrent opinion of Justice Wolf in *Velilla vs. Pizá et al., supra,* where he says:

> "I conceive the principle to be, ever since the days of Rome, that the heirs of a dead man succeed to all of his rights and title, and that they may bring a suit to recover all, or any part, of the property belonging to the decedent's estate which is held adversely to them. The exception is when there is more than one heir no single heir can bring a suit to recover a particular piece or portion of the property until he has been made the sole and exclusive owner of the same. All the heirs may bring such a suit, or one heir in representation of all might, under certain restrictions, successfully do so * * * All the heirs may join to bring a suit for any individual piece of the property which may be held adversely to them and of which they are the true owners."

This matter has been determined in Porto Rico in the District Court for the Judicial District of Guayama in the case of *Maria Dolores del Rosario et al. vs. Mateo Rucabado et al.,* in favor of the plaintiffs in an action of ejectment and is now pending before the Supreme Court of Porto Rico. The theory upon which the District Court of Guayama decided in favor of the plaintiffs in ejectment was, after considering an action brought by less than all of the heirs for an undivided portion of the property, as follows:

> "When there is only one heir, or when all of those who comprise the sucesión of the decedent join, it is undoubted that when there is a will, or, what is the same, a declaration of heirship, the title of inheritance is sufficient for the action, and if the inheritance was accepted and all of the heirs take all of the property as legitimate owners, they are subrogated to the rights of their predecessors. The partition when all of the heirs act together, or there is only one, is not necessary to give them all or the sole heir a right to a reinvindicatory action. This doctrine is sustained by the decisions of the Supreme Court of Spain and by the commentaries upon the Spanish Code, which decisions and commentaries upon the Spanish Code formed the basis of the decisions of the Porto Rico Supreme Court above cited.
>
> "Articles 1068 and 1072 of the Civil Code (of Spain), in force in Porto Rico until amended in 1902, do not forbid that all of the heirs interested in a property, or an undivided right, may reclaim without waiting for the partition and adjudication.
>
> Decision of Supreme Court of Spain, Nov. 19, 1904.
>
> Decision of Supreme Court of Spain, Jan. 12, 1905.
>
> "It appearing that the plaintiff in a reinvindicatory action and his brothers, whom he represents as guardian, are children of the purchaser of the real property, object of the action, and his capacity being recognized as an heir of the same, his personality as such heir cannot be doubted, nor his right to rein-

vindicate, because, for its effects upon the inheritance, the heir and the testator are considered as one and the same."

Decision, Supreme Court of Spain, July 4, 1891.

"It is evident that no matter what the final liquidation of the estate may be, and the value and the efficacy of the title of adjudication of the property which constitute the estate, the heir, as such, and the predecessors of the estate in question, have an action at any time to reclaim or reinvindicate that which belongs to the estate."

Decision, Supreme Court of Spain, Feb. 28, 1893.

"When the 'dominio' of a property is inscribed in the registry of property in favor of a person and this person dies the title of inheritance, and the subsequent declaration of heirship, is sufficient title for the heirs to establish a reinvindicatory action, since, in accordance with article 659, the inheritance comprehends the rights of a person, which are not extinguished by his death, and the 'dominio' therefore is transmitted to his heirs."

Decision, Supreme Court of Spain, May 20, 1899.

See also

Decision, Supreme Court of Spain, Jan. 31, 1903.

Furthermore, in all of the decisions from the Supreme Court of Porto Rico cited, the right of the defendant or defendants came from the same source, but not direct from the plaintiff, as in this case, and are not applicable to this case, for further reasons that we shall set forth.

In the case of *Blondet et al. vs. Fantauzzi Hmnos, supra,* it was decided upon the principal ground (page 319) that the appellants—

"Have not proved their ownership of the property sought to be recovered, and that the defendants possessed the same by virtue of titles which have not been annulled."

And quoting from the decision of the Supreme Court of Spain of April 20, 1874, the Porto Rico Supreme Court says, page 320:

> "A universal title, such as a title of inheritance, is ineffectual and insufficient in itself upon which to recover property *in the absence of evidence that such property forms a part of the inheritance,* because the heir cannot acquire other property or rights than those left by his predecessor upon his death."

In that case all the parties in interest, who should have been plaintiffs, or to whom the right descended, were not joined as such.

The case of *Amy et al. vs. Amy et al., supra,* was decided upon the principal ground (page 408) that:

> "It is an action for reinvindication, or to declare a legal tacit mortgage on the same property.
> "Of course, if the property should belong to the complainants they would not be entitled to have an encumbrance declared on the same property, and *vice versa.*"

Furthermore, the principal defendant, Mateo Amorós, was a third person under the provisions of the mortgage law (pages 411-412).

In the case of *Velilla vs. Pizá et al., supra,* the court holds that (page 1074):

> "Heirship conveys a joint right to the *aggregate* heritage, and by virtue thereof, upon the death of their predecessor, all of the heirs become owners in common. But until proceedings for partition and adjudication are terminated, and until by virtue thereof this community of ownership does not cease, no one of the heirs may be considered to be the sole and exclusive owner of any particular portion or fixed and specific aliquot part of the property of the heritage, which character it is necessary to prove before an action of ejectment may prosper.
> "The aforesaid sections confer a right to each and

> all of the properties of the heritage, but not a specific right to certain properties, which can only be acquired by an adjudication lawfully made in partition proceedings."

In the Velilla case there had been no partition, and all of the heirs did not join. In the present case there was but one heir, and his heirship conveyed a right to the aggregate heritage.

To this point *Manresa*, in his *"Commentaries on the Civil Code,"* volume 5, page 338, says:

> "And even in case of intestate heirship, it is further required, before this possession may be exercised, that a competent court shall have designated the heirship in the manner prescribed by sections 977 to 1,000, both inclusive, of the Law of Civil Procedure."

In the present case plaintiff (defendant in error) was duly declared the sole heir of his father.

The court, in *Velilla vs. Pizá*, quoting from a decision of the Supreme Court of Spain of May 20, 1899, says:

> "Taking as a basis the fact that at his death the person had full possession of certain real property by virtue of a conveyance duly recorded in the registry, it is unquestionable that from the moment of his death his children acquired the same by direct succession, and the designation of intestate heirship recorded in their favor in the registry constitutes dominion title sufficient to sustain an action of ejectment unless a better title should defeat it."

The Supreme Court of Porto Rico, in distinguishing this case from the Velilla case, says:

> "In that case, however, complete title to the property was recorded in favor of the ancestor; the action was brought by all of the heirs. * * * In that case all of the heirs claimed in behalf of the community, and in this case one heir claims a moiety of an estate as his exclusive property."

That is exactly the distinction which is apparent in the case now before the court.

In the case of *Cruz et al. vs. Ortiz,* 17 P. R. R., 1134, the same distinction is made. In that case all the necessary parties plaintiff were not joined, as appears from the opinion, page 1135:

> "In an action of ejectment setting out a title by inheritance the brothers, of plaintiffs, Mauricio and Francisco, are necessary parties. The plaintiffs, in their complaint, claim a part of the land, and in the prayer thereof ask the court to render a judgment declaring that three undivided fifths thereof belong to them." * * *
>
> "We have heretofore often held that in an action of ejectment the first question to be considered is that the same can be brought only by the legitimate owner to recover the property which belongs to him, and hence it is a fundamental requisite of such an action that he must prove clearly and certainly that he is the owner of the property sought to be recovered and that it is in the possession of the defendant."

So, it must be evident that the law of procedure in the courts of Porto Rico in ejectment is the same as that in the courts of most of the States of the United States, and that the right of action in ejectment depends upon the same principle, namely, ownership and adverse possession.

In the case of *Davila vs. Davila,* 18 P. R. R., 112, the same distinction is made. The court says:

> "If we bear in mind the fact that plaintiff's claim is based simply on the ground that he is *one of the heirs,* such ground is not in itself sufficient under the jurisprudence established by the Supreme Court of Spain in its decision dated June 13, 1901, and by the decisions of this court in Velilla *vs.* Pizá *et al.,* 17 P. R. R., 1039, and Cruz *et al. vs.* Ortiz, 17 P. R. R., 1134."

Furthermore, in the case of *People vs. Dimas et al.*, 18 P. R. R., at page 1041, the court says:

> "The legal principle that when an action of ejectment is brought against persons in possession of a thing in controversy and the strength of a title that was thought to be valid, it is necessary that the nullity of this title be first asked for, is applicable *only when the action arises from such a nullity, but not when the right* to bring an action of ejectment is independent thereof."
>
> Decision, Supreme Court of Spain, Oct. 16, 1873.
>
> Decision, Supreme Court of Spain, Jan. 17, 1889.
>
> Decision, Supreme Court of Spain, Apr. 6, 1889.
>
> Decision, Supreme Court of Spain, Feb. 13, 1892."

In the case of *Trinidad et al. vs. Sucesión of Trinidad*, 19 P. R. R., 616, the distinction is again made, because in that case all the heirs did not join as a community, saying (page 624):

> "In cases of this kind the true personality of the successor of the deceased must first be legally established."

And, finally, upon this point, in the case of *Collado et al. vs. Perez et al.*, 19 P. R. R., 881, the court sustains the right of all the heirs as a community to bring an action of ejectment in the following words:

> "If it (the sale) was not made, then the complaint should be sustained, inasmuch as it has been alleged and admitted that the property belonged to Pedro Collado Ramirez, in whose name it is still recorded in the registry of property of San German, and that the plaintiffs, who were declared by the court to be the heirs of Pedro Collado, *compose the sucesión* in

> whose name and for whose benefit this action (ejectment) is brought."

See also

Morales *vs.* Landrau, 15 P. R. R., 761.

There is one further consideration under this point of law, and that is the question of estoppel. The defendants (plaintiffs in error) secured what title they have (and it is denied that they secured any legal title) from the plaintiff (defendant in error), and therefore they would be estopped from setting up that the plaintiff has not sufficient title to maintain this action. This principle is determined, incidentally, in the case of *Gaines vs. New Orleans,* 73 U. S., 642.

See also

Concurrent Opinion in Nieves *vs.* Sanchez, 17 P. R. R., 844, and Sup. Ct. of Spain, Decisions cited.

The next point made by the defendants (plaintiffs in error) is "that the right of action, if it ever existed, had proscribed." It is claimed that the right of action proscribed under section 1957 of the Civil Code of Porto Rico, in force until 1902, which is the same as section 1858 of the present Civil Code, and is as follows:

> "Ownership and other property rights in real property proscribe by possession during ten years as against persons present, and for twenty years as against persons absent with good faith and a proper title."

It must be clear that the defendants (plaintiffs in error) did not possess the title in question with *good faith and proper title.* The good faith is not enough, even had they possessed with good faith. Section 1950 of the Civil Code, in force until 1902, defines good faith as follows:

> "Good faith in the possessor consists of his belief that the person from whom he received the thing was the owner of the same and could convey his title."

It will be conceded that the knowledge or belief here referred to is what one actually knows or believes, or is presumed to know or believe, or ought, as a reasonable person, to know or believe. The defect in the title was apparent. The defendants (plaintiffs in error) are bound by what the firm of Mourraille and Martineau knew or ought to have known, as they are in direct privity, are the successors by the dissolution of the partnership and inheritance from one of the partners.

Good faith is further defined in sections 436 and 544, which are referred to in sections 1852 of the Civil Code, and are the same in the old Code. "Proper Title" is defined in section 1853 of the Civil Code, being the same as section 1952 of the old, as follows:

> "By a proper title is understood that which legally suffices to transfer the ownership or property right, the proscription of which is in question."
>
> "SECTION 1854. The title for proscription must be true and valid."
>
> "SECTION 436. A *bona fide* possessor is deemed to be a person who is not aware that there exists in his title, or the manner of acquiring it, any flaw invalidating the same.
>
> "A possessor in bad faith is deemed to be any person possessing in any case contrary to the above."

It is clear that the title (alleged) of defendants (plaintiffs in error) has been shown not to be true and valid.

Furthermore, defendants are relying upon the equity of title by proscription, but cite the sections they rely upon as supporting their theory that the right of action has proscribed, while, in fact, the right of action would not proscribe, according to section 1834 (old Code, 1963) for thirty years, as follows:

> "Real actions with regard to real property proscribe after thirty years."

The question of good faith was definitely decided in the case of New Orleans *vs.* Gaines, 82 U. S., 624.

As the question of good faith enters into the points involved in this brief upon other grounds, we leave a more thorough discussion of it from the standpoint of the civil law until later.

The proscription relied upon by the defendants (plaintiffs in error) under section 1258 of the present Civil Code (being 1291 of the former) is not applicable to this case, for plaintiff is not asking for the rescission of a contract; there never was any contract, but even if it were applicable it would not apply to this case, for the reason that the four years do not begin to run as against a minor until he is released from his guardianship, which event occurred just prior to bringing this suit, by his being emancipated.

> "SECTION 1266. The action asking rescission must be brought within four years.
>
> "For persons subject to guardianship and for absentees, the four years shall not commence until the incapacity of the former has ceased to exist, or the domicile of the latter is known."

But even had a contract existed, which it was desirable to have declared null, the right would not be lost, in accordance with section 1268 (present Code, 1301 former Code) until four years from the time the minor was released from guardianship.

Section 1043 (of the present Code, 1076 of the old Code), included within the chapter on "Collation and Division" of the Civil Code, provides that:

> "A rescissory action, by reason of lesion, shall proscribe after four years counting from the time the division was made."

This, of course, only applies to those who took part in the division, and the division refers to the division between heirs when there is more than one. Here there is but one heir; there is nothing but a so-called transfer or sale of the infant's property in payment of an alleged debt of his deceased father's estate. It also refers to the division of an estate made by the testator in dividing a property among his heirs-at-law (herederos forzosos).

What has been said in regard to section 1957 (being 1858 of the present Code) applies equally to the judicial order of April 7, 1899, under the military government, and its effects as amending section 1957, and, furthermore, this judicial order has been declared by the Supreme Court of the United States to be in certain cases an unreasonable limitation of the period of proscription.

Hernandez *et al. vs. Ochoa et al.*, 230 U. S., 139.

Argument on Point 4.

A discussion of the seven subdivisions of point No. 4 will clearly show the illegality of all the proceedings entered into by the widow of the father of defendant in error, together with the guardian *ad litem* whereby plaintiffs in error secured their so-called title to the property in question. It will involve a discussion of the Civil Code of Spain, which went into force in Porto Rico in January, 1890; the Law of Civil Procedure, which went into force in Porto Rico on January 1, 1886, and the mortgage law.

(*a.*) The Law of Civil Procedure, in force in Porto Rico until 1904, in art. 1040, provides that in all cases involving an estate by inheritance where there are infants a probate proceeding is necessary, and probate proceeding is the name given to the acts which are carried into effect for the payment of debts of a deceased and for the distribution of his property among the heirs and legatees, if there are any, as provided in the will, or as the law determines.

Without these probate proceedings the widow and guardian *ad litem* could not legally recognize debts against the estate, much less pay them, and the only exception is when the minor is represented by his father, or, what is the same, when the father or mother have no interest in the estate. When, as in this case, the parents, or either of them, have an interest in the estate, the probate proceedings for the recognition of debts is an absolute necessity. The law recognizes that there are fathers who are prodigal with their children's interests and mothers who do not hesitate to prejudice their children's interests by collusion with third persons by simulating debts and in other ways working against the interests of their children. If parents are forbidden by law from selling or encumbering the real property of their minor children, and from executing contracts in their name in regard to real property or to settle questions in litigation without being previously authorized by a competent judge, it must be clear that, following the principle of the Spanish law *"donde existe la misma razon se aplica el mismo derecho,"* they can not accept and recognize obligations which deprive their minor children of their right of inheritance.

The Law of Civil Procedure above referred to, in article 1040, upon this point says:

> "Testamentary proceedings shall be called necessary in the cases wherein the judge must institute them *ex officio*. Such cases are:
>
> "(1.) When all, or any, of the heirs are absent and have no legal representative in the place where proceedings are to be instituted.
>
> "(2.) When the heirs, or any of them, are minors or incapacitated, unless they are represented by their parents."

And *Escriche*, at page 1033, in commenting upon this section, says:

> "Testamentary and intestate proceedings are those proceedings which have for their object the payment

> of the debts of the deceased and the distribution of the rest of the property among the heirs and legatees, in accordance with the will, or among the more immediate relatives in accordance with law in case the deceased has died intestate."

Even if the debts were legitimate the illegal form in which they were recognized would take away all validity from the act of adjudication of the property of the infant son in payment thereof. We have alluded to this point, not because it goes to the root of the matter, but to show that from the very beginning all that was done was illegal, the principal question being the alienation of the properties of the infant without the formalities established by law for the public good.

(*b.*) Even if the widow and guardian *ad litem* could have recognized the debt of the firm of Mourraille and Martineau, could they have alienated the infant son's property in payment of said debt?

The Supreme Court of Spain, "La Dirección General de los Registros," and Manresa have discussed this question in full. It is clear from these three authorities that the act of adjudicating property of an intestate to third persons, strangers to the inheritance, is an absolute act of alienation, and they agree that when there are minors or incapacitated persons with interest in the inheritance all of the legal requisites established for the sale of property of minors or incapacitated persons shall be fulfilled:

> "If in the division property is adjudicated to pay debts, "La Dirección" bases its judgment on the decision of June 24, 1902, taking into account the doctrine upon this point that appears in the decisions of September 10, 1881, February 9, 1887, November 24, 1898, April 1 and April 3, 1899, and October 9, 1901, and in the decisions of the Supreme Court (of Spain) of November 14, 1881, and May

> 23, 1899. If the adjudication is made in favor of one of the heirs it is simply an act of partition which is carried into effect in accordance with the special rules for this kind of act, since the property is divided and remains among the heirs of the estate. (But) IF THE ADJUDICATION IS MADE IN FAVOR OF A CREDITOR, OR OF A THIRD PERSON, IT IS AN ACT OF ALIENATION, FOR WHICH, WHEN THERE ARE INFANTS INTERESTED, THE FORMALITIES OF LAW WHICH ARE PROPER FOR SUCH ALIENATION SHOULD BE OBSERVED. * * * In such cases, as appears from the decision of September 30, 1905, if the father has no interest opposed to that of his children he may represent them in the partition, and Art. 1060 (Code of Civil Procedure) is not applicable, but as it is an absolute alienation it is necessary to apply Art. 164 (which is the same as Art. 229 of the Revised Civil Code of Porto Rico) which requires *prior* judicial authorization with all of the formalities set forth therein.
>
> 2 Manresa, 46 (Edition 1907).

Art. 164 of the old Civil Code (229 Revised) is as follows:

> "The father and the mother cannot alienate any real property belonging to their children the usufruct of which they receive or over which they have the administration, nor can they burden the same except by mutual consent and after securing the authorization of the District Court of their domicile."

And the Supreme Court of Spain, in commenting upon this section, in its decision of April 1, 1899, says:

> "The adjudication of property in payment of debts is a form of sale, as the Supreme Court has declared according to its decision of November 14, 1881, or an act of absolute alienation, as "La Dirección General" has determined on September 10 of the same year and on November 19, 1898. Under this supposition, and the property being inscribed in the name of the minor heirs, all of the requisites and formalities necessary for the alienation of property

of minors should be observed, which are in the present case those established in Art. 164 of the Civil Code (229 Revised Code of Porto Rico) in regard to the participation which the minors who have been represented by their fathers in the deed of adjudication have in the said property by virtue of hereditary rights and the requirements of Section 272 of the same Code, in respect to the participation corresponding to other minors represented by their protutor; this document in consequence thereof, in so far as it refers to the participation of both classes of minors, is subject to the incurable defect of the requirements of Art. 164 and Art. 272 of the Civil Code not having been complied with."

Decision of April 1, 1899.

"In order to determine the judicial character of the adjudication of property in payment of debts made in the participation proceedings of an estate it is necessary to distinguish, as appears from the Decision of November 24, 1893, between those adjudications made in favor of a creditor and those made in favor of one of the heirs, because in the first case these acts constitute an especial act of alienation of property, and in the second case it is an act of partition of an estate, since the property adjudicated is divided among the heirs, although with the obligation of paying the debts.

"Under this consideration, having adjudicated a property to one of the heirs in payment of debts said adjudication is truly an act of division, and this class of act is governed by its own special rules and not by those established for the alienation of property of minors, as appears from the Decision of October 9, 1901. The decisions of November 10, 1881, February 9, 1887, and November 24, 1898, and April 1, 1899, and the decision of the Supreme Court of November 14, 1881, and May 23, 1899, confirm this doctrine, since the adjudications in payment of debts, to which they refer, were made in favor of creditors, and not in favor of heirs, except that in the case of April 1, 1899, the creditor was also an heir."

Decision, Supreme Court of Spain, June 24, 1902.

"In order to determine the judicial character of the adjudication of properties in payment of debts it is necessary to distinguish the cases of those adjudications which are made in favor of the heirs, since in that case they only constitute a special act of partition of the estate, but in other cases they amount to an act of alienation of property, and subject, therefore, to the requisites which for acts of this kind the laws require when there are minors interested, according to the decision of June 24, 1902. If the adjudication in payment of debts of said hereditary property is made in favor of the surviving husband, or of other persons who are not heirs, for that act, in view of the doctrine set forth, the judicial authorization is necessary in regard to the participation which in said hereditary estate belongs to the minors who have been represented by their fathers, in accordance with Art. 164 (229 of present Civil Code of Porto Rico) and for that reason the provisions of 1060 of the Civil Code in regard to the form in which the adjudication has been carried out is not applicable."

Decision of September 10, 1905.

"The adjudication of hereditary property for the payment of debts, made in favor of persons WHO ARE NOT HEIRS, requires the judicial authorization as regards the partition in which the estate belongs to minors represented by their fathers, in conformity with the provisions of Art. 164, and in regard to Art. 1060 of the Civil Code not being applicable as to the form in which these adjudications are carried out."

Decision of September 30, 1905.

La Dirección General of Registrars of Spain, in their decision of November 19, 1898, held that when a minor, emancipated by his marriage, took part with his father in the partition of properties in payment of debts that the act was illegal because they had not complied with the requirements of Art. 165 of the Civil Code.

And, again, in the case of minors interested in an estate not represented by their father or their mother, but by a "defensor," a schedule of debts was made.

the judicial administrator obtained the authorization of the court to sell and sold them, the Dirección General of the Registrars declared the sale illegal, because it was not made at public auction and after appraisement."

Decision, April 3, 1899.

And in another case where the mother, for herself and as legal representative of her minor children, adjudicated in the payment of debts certain properties, "La Dirección General of Registrars" declared the act illegal.

Decision of November 24, 1898.

In another case those interested in hereditary property in which minors were interested executed a deed which they called a partition. In that deed they described certain properties and gave them in payment of lebts. "La Dirección General of Registrars" declared such an act (although it was called a partition, was not a partition) to be an act of alienation of property, and, there being minors interested, they should have complied with the formalities prescribed in those cases for a sale of property.

Decision, December 26, 1893.

We could cite many other decisions from the Supreme Court of Spain and from "La Dirección General" to the same effect, and especially we cite the decision of February 9, 1887, of the "Dirección General." Therefore, it must be clear that the adjudication or setting apart of part of a hereditary estate in payment of debts when there are minors interested in that estate is an alienation of a portion of the estate, which cannot legally be done except in accordance with the provisions of law for the selling of a minor's property.

The question presents itself: "What are the legal requirements for the alienation, sale, or encumbrance of a minor's property?"

We have already quoted section 164 of the Civil Code in force at the time. It is seen by that section of the substantive law that the rights of a minor were protected to the utmost; the property could only be alienated for his support and immediate needs (utilidades y necesidades) and only after an application made to a court and a hearing by the public prosecutor, and after the proceedings as prescribed by the Code of Civil Procedure, then in force, had been carried out. To this effect we will refer the court to the Code of Civil Procedure, then in force, and especially to the following sections:

> "Art. 2010. Judicial permission shall be necessary in order to alienate or encumber the property of minors * * * which pertains to the following classes:
>
> "(1.) Real property.
>
> "(2.) * * *
>
> "Art. 2011. In order to decree a sale it shall be necessary:
>
> "(1.) That the father or mother, in a proper case, of the child not emancipated, should request it."
>
> "(2.) * * *
>
> "(3.) That the reason for the alienation and the purposes to which the amount obtained is to be applied be stated.
>
> "(4.) That the necessity or utility of alienation be proven.
>
> "(5.) That the promotor-fiscal be heard in the matter."
>
> "Art. 2012. If the proof referred to in No. 4 of the foregoing article is to be furnished by witnesses there must be at least three, and the clerk shall identify them. Should he not be acquainted with them two witnesses for the purpose of identification shall be required.
>
> "The evidence shall be taken after the promotor fiscal has been cited to appear."
>
> "Art. 2014. The authority shall be granted in all cases under the condition that the sale must be made at public auction, after an appraisement, if

property mentioned in (1), (3), (4) of Art. 2010 is involved.

"Sales made by the father or mother, in a proper case, exercising parental authority, are excepted from the foregoing rule. Such sales may be made without any other requisite than that of having first obtained judicial authority with a hearing of the promotor fiscal and of the persons mentioned, etc. * * *"

The above exception refers, of course, to those cases where the interests of parents are not adverse and where the court does not consider the necessity of the appointment of a guardian, which is not the case here.

"Art. 2015. The judge shall always appoint the experts for the appraisement, who cannot be challenged."

"Art. 2016. After the appraisement has been made the judge shall order that the sale shall be announced for the period of 30 days, etc." * * *

And there shall be an auction, etc., as is set forth in detail in the following sections (quotations are from War Department translation, Government Printing Office, 1909).

The same requirements are found in the mortgage law, which contains all of the law in reference to the alienation and sale of real property and its record.

"Art. 205. Neither the father, or, in a proper case, the mother, can convey the real property belonging to the child of which they enjoy the use or administration; nor can they encumber it, except for justified reasons of profit or necessity, and with the *previous* authority of the judge of the district, on hearing the Department of the Public Prosecutor."

See also

Art. 200, Mortgage Law.

Thus it will be seen that the matter was of sufficient importance to have been clearly embodied not only in the sub-

stantive law (Civil Code), but also in the Code of Civil Procedure, with minute instructions as to how the alienation should be carried out. It was also embodied in the mortgage law. Thus its importance was seen, it being practically the only requirement of law that is carried in all three codes, almost identical in each. What is more, it is still the law, having been retained by the law-makers since the American occupation.

The Supreme Court of Spain has many times interpreted these sections of the codes. We think it is clear that the "operaciones particionales" in favor of the partnership of V. Mourraille & Martineau constituted an act of alienation, it being to all purposes and intents a sale, and therefore it had to be done in conformity with the provisions of the above-referred to laws. This clearly appears from the decision of April 1, 1899, page 4, volume 87, of Jurisprudencia Civil:

> "The transfer of properties in payment of hereditary debts is verily an act of alienation, and, consequently, the owners of properties being minors it is necessary to observe the requirements and formalities which for the sale of this class of property articles 164 and 262 require."
>
> Decision of June 24, 1902.
> Decision of Sept. 10, 1891.
> Decision of Feb. 9, 1887.
> Decision of Nov. 24, 1898.
> Decision of Nov. 14, 1881.
> Decision of May 23, 1899.

To the same effect is the text, as well as all of the cases cited, in the leading work of Carlos de Odriozolo entitled "Diccionnairio de la Jurisprudencia Hipotecaria," pages 23, 24, 25, and 5 of the first appendix, and 5 and 6 of the third appendix, and page 50 of the same.

Thus it will be seen that not only by the very clear terms of the substantive law, the Civil Code, the Code of Civil Procedure, and the mortgage law, but also from the commentaries and numerous decisions cited, there are certain

legal requisites to be observed for the alienation of a minor's property, which, not being observed, invalidated absolutely the sale and should prevent the inscription in the registry of property.

In the present case no one of these requisites were observed. The alienation was invalid, void absolutely, void *ab init o;* does not require to be rescinded, could not be rescinded, could not be ratified; any attempt at ratification would not be ratification, but a new contract. Hence the defendants, through their predecessors in interest, *never acquired any title,* have only been holding under a color of right.

This brings us to subdivision (*c*), as to whether or not the approval *after the act* by a court of the so-called "partition proceedings" could cure the defects.

The law and the decisions are uniform that it did not and could not. This must be apparent at once. A court by its approval cannot make lawful an unlawful act. To this point we cite the court to the following jurisprudence and decisions:

> "The fact that the partition proceedings were judicially approved is not sufficient to cure the defects to which they are subject, because, as was declared to the same effect in various decisions (and among them that of June 14, 1897, and April 30, 1903), such an approval has merely a formal or ceremonial character and cannot be equivalent in any manner to the provisions and decisions which the judges of courts dictate."
>
> Odriozolo, page 50, 3d appendix.
> Decisions of Supreme Court cited.

The Civil Code of Spain, in force at the time, has branded as void those acts which are carried out against the provisions of law, in the following words:

> "Art. 4. Acts executed against the provisions of law are *void* except in the cases in which the said law orders their validity."

And the law further says:

> "Art. 1259. No one can contract in the name of another without being authorized by him or without having his legal representation according to law.
>
> "A contract executed in the name of another by one who has neither has authorization nor legal representation shall be void, unless it shall be ratified by the person in whose name it was executed before being revoked by the other contracting party."

The law is the same in the United States. In the case of *Gaines vs. City of New Orleans*, 73 U. S., 642, the court held:

> "The defendants having failed to prove that any order of court was ever given to make these sales, they are nullities and confer no titles, and this is the decision in Patterson *vs.* Gaines, 6 How., 550, which is reaffirmed in Gaines *vs.* Hennen, 24 How., 553."

And in the same case it was held, to quote from the syllabus:

> "The probate court could not by a subsequent order give validity to sales made by executors which were null and void by the law of the State when they were made."

This whole matter has been at least once definitely determined by the Supreme Court of Porto Rico in the case of Monge *et al. vs.* Zechini *et al.*, 17 P. R. R., 729, where the court holds—in a case where there had been a partition made, with all of the necessary requirements of law, of hereditary property where minors were interested, and thereafter on an adjudication of one of the minor heir's property in favor of a third person, a stanger to the estate—that:

> "'A division legally made,' says section 1035 of the Revised Civil Code, which is the same as 1068 of the former Civil Code, 'confers upon each heir the exclusive ownership of the property which may have been awarded to him.' The plaintiffs, Juan del

Carmen, Valeriana, and Mercedes Monge y Agosto, therefore, acquired ownership of the lands adjudicated to them by virtue of the partition of the estate of their predecessor in interest, Juan del Carmen Monge. It cannot be alleged that the partition was illegal for lack of judicial approval, because section 1027 of the Revised Civil Code, which is section 1060 of the Spanish Civil Code and which was in force at the time the partition was made, provides that, 'If the minors should be subject to the parental authority, and are represented in the division by the father or by the mother, in a proper case, neither judicial intervention nor approval shall be required.' Section 1048 of the former law of Civil Procedure, which exacted such requirement in cases similar to the present, was modified by section 1060 of the former Civil Code already cited.

"But even assuming that judicial intervention and approval of the partition of the estate of the deceased, Juan del Carmen Monge, was necessary, the defendant, Antonio Zechini, who intervened therein as assignee of the title and interest of the heir, Eulalia Monge, cannot plead the lack of said requirement to profit by its omission, because in accordance with section 1269 of the Revised Civil Code, which is 1032 of the former Civil Code, persons with capacity cannot plead the incapacity of those with whom they contracted, and Antonio Zechini contracted with the plaintiffs, executing with them and with the other heirs the partition of the estate of the deceased, Juan del Carmen Monge, the former being represented by their mother."

"The contract of exchange executed by the plaintiffs with the four defendants, wherein Zechini acted in his own right and in representation of his sisters, is manifestly null, because section 4 of the Civil Code provides that acts performed contrary to the provisions of the law are void, except when the law preserves their validity, and section 164 of the Civil Code in force at the time of the acquisition of the lands, subject-matter of this litigation, which is 229 of the Revised Civil Code, prescribes that neither the father nor the mother, in a proper case, can alienate the real property of the child the usufruct or administra-

tion of which pertained to them, or encumber the same *except for justified reasons of utility or necessity* and upon *authorization* of the judge of the district wherein they are domiciled, *after hearing* the fiscal thereof, excepting as the mortgage law provides with respect to the effects of transmission."

"A similar provision is contained in section 2010 of the Law of Civil Procedure in force at the time of the exchange, and title V of the Law of Special Legal Proceedings, approved March 9, 1905, treats of the authority over rights and properties of minors. The law approved on March 9 of the current year contains more restrictive provisions on the same subject."

"The fact that the defendants had the order of approval made in the dominion-title proceedings, with respect to the lands acquired by them from Cruz Agosto together with those acquired from Eulalia Monge recorded in the registry of property as one estate, has no weight. Such record, according to article 33 of the mortgage law, cannot give validity to a contract that was void in accordance with the statutes."

"The contract of exchange being, as it is, null, sections 1270 and 1271 of the Civil Code in force, which are a re-enactment of sections 1303 and 1304 of the former Civil Code, are applicable to the case. Said sections read as follows:

" 'SECTION 1270. When the nullity of an obligation has been declared, the contracting parties shall restore to each other the things which have been the object of the contract with their fruits, and the value with its interest, without prejudice to the provisions contained in the following sections.

" 'SECTION 1271. When the nullity arises from the incapacity of one of the contracting parties, the incapacitated person is not obliged to make restitution, except to the extent he has profited by the thing or by the sum he may have received.' "

" 'In view of such definite provisions, the defendants must restore to the plaintiffs the lands which they claim from them, with the fruits thereof, the latter not being obliged to make restitution to the former, as it has not been proved that they profited

by the exchange. It devolved upon the defendants to prove this.

"'Neither has dominion of the lands in question been acquired by prescription by the defendants, in accordance with section 1858 of the Civil Code, and as alleged by them in the supplement to their answer, because, although in this case the parties were present and the 10 years of possession required by said section had elapsed, the requirements of good faith and just title necessary for the purpose were lacking.'"

The case above quoted from goes further than the case at bar, for the reason that in that case (Monge *vs.* Zechini) the infants were represented by their father, whereas in the case at bar, although the mother took part in the transaction, her interests were adverse to those of her son, Clemente Diaz y Quiñones.

The decisions of June 14, 1897, March 14, 1884, and April 30, 1903, of "La Dirección General de los Registros" have been sufficiently definite upon this point.

Quoting from that of March 14, 1884:

"The partition of an inheritance in which minors are interested, *although it has been judicially approved*, cannot be considered as embraced among those documents issued by judicial authority."

And quoting from the decision of April 30, 1906:

"The fact that these partitions had been judicially approved is not sufficient to cure the defects to which they are subject, because, in accordance with various decisions, such as that of June 14, 1897, such approval has a character merely *formal and ceremonial* and cannot be considered equivalent in any manner to the final decisions which are dictated by the judges and tribunals."

These decisions cited from "La Dirección General" of the registrars of property have the force of decisions of the high-

est courts, because under the law of Spain authorizing the registrars to act as a tribunal they have final jurisdiction in all matters relating to real property.

(*d*) The next question is, "Whether it was possible to transfer the dominio of property direct from the deceased to the creditors without its first passing to the heir and inscribed in the registry of property in his name?"

When the heir renounces his inheritance, or refuses to accept it, the inheritance is considered vacant, and the law supposes that the personality of the decedent still exists for all legal effects. By virtue of this legal fiction all the acts which are carried out by the executor or administrator are considered acts of the decedent, but when the inheritance has been accepted—as in this case—no such legal fiction exists, and nothing can be done in relation to the hereditary property without the consent and concurrence of the heirs, and this is because while the inheritance is vacant the known or presumptive heir has not yet acquired the dominio nor any right over the property, but in case the heir has accepted the inheritance he acquires it in full and absolute dominion and enters into possession by the mere act of the death of the decedent, to which date all acts of acceptance retroact.

On account of these premises, we maintain that the fact that the property in question of the decedent, Clemente Diaz y Gonzalez, having passed to the predecessors of the defendants (plaintiffs in error) without the dominion of the heir, Clemente Diaz y Quiñones, having previously passed and been inscribed in the registry of property in his name, such act was entirely illegal, in accordance with the Civil Code and the mortgage law, as will be seen from the citations given:

> "*Application of Art.* 20, *in regard to the adjudication of property in payment of debts:* The decisions of November 11 and December 9, 1876, and December 26, 1893, are based upon the same prin-

ciple as those which regulate the requisites which are necessary for the inscription of the transfers of dominion made by executors. It is shown by these decisions that properties adjudicated in payment of debts must be inscribed in the name of the heir before making the inscription in favor of the person to whom the property is adjudicated, and this must be done even in the case where the debts equal or exceed the value of the whole estate, because if article 20 is applied to one case, for the same reason, it must be applied to all cases.

"The previous inscription in favor of the heir is all the more necessary when the debts in payment of which they have adjudicated property in the testamentary proceedings have been contracted by the heirs themselves and not by the decedent. And so the decision of February 12, 1896, holds.

"The previous inscription in favor of heirs is also indispensable in the case where the judical administrator of an estate sells the property comprised in the schedule for the payment of debts" (Decision of April 3, 1889).

Galindo y Escosura, "Commentaries on the Mortgage Law," vol. 2, page 186, ed. 1903.

"The deed of sale executed by the court in the name of non-accepted inheritances is inscribable and is considered as made in the name of the decedent."

Decision, December 16, 1887.

"Hereditary property cannot be inscribed, if it is not inscribed in the name of the heir, unless the inheritance is vacant (yacente)."

Decision, June 12, 1895.

These decisions, based on the mortgage law, are in conformity with the requirements of the Civil Code, in force at that time, and which are the same in the corresponding sections of the Code in force today.

"The possession of hereditary property is understood as transferred to the heir without interruption, and from the instant of the death of the testator, in case the inheritance be accepted.

> "A person who repudiates an inheritance in a valid manner is understood as not having ever possessed it."

By the well known principles of the Spanish law, and the direct provisions of the Civil Code now in force in Porto Rico, and then in force, possession passes upon the death of the ancestor directly to the heir. There is no need of any judicial placing in possession; there is no need of any settling of an estate; there is no need that the debts of the estate be settled; the possession passes, and upon filing in the registrar's office the declaration of heirs (declaratoria de herederos) show who are the heirs of the decedent, the property should at once be inscribed in the name of the heir or heirs.

Section 442 of the Civil Code is as follows:

> "The possession of hereditary property is understood as transferred to the heir without interruption and from the moment of the death of the testator, in case the inheritance be accepted." * * *

Section 443, referring to the same subject, is as follows:

> "Minors and incapacitated persons may acquire the possession of things; but they shall require the assistance of their legal representatives to make use of the rights in their favor arising from possession."

Thus it will be seen that by force of law the plaintiff had possession upon the death of his father, and it was from this possession that defendants (plaintiffs in error) ousted him by the void and fictitious title.

(*e*) The next question that presents itself is: "Whether or not the legal consent could have been given by the infant heir for the alienation of his property, he not being represented by any of the persons that the law requires?"

This question is not essential for a consideration of this

case, but a consideration of it will show further illegalities in the proceedings by which the defendants (plaintiffs in error) acquired title.

Article 1261 of the Spanish Civil Code—being the same as section 1228 of the present Code—is as follows:

> "There is no contract unless the following requisites exist:
> "(1.) The consent of the contracting parties.
> "(2.) A definite object which may be the subject of contract.
> "(3.) The causes for the obligation which may be established."

Was there any consent of the contracting parties? The minor could not consent in his own name; the father was dead. Did the mother or guardian consent? The mother could not, as she had adverse interests; there was no guardian, merely a "defensor," appointed to represent the minor in court, who would have no authority under the law to consent to the alienation of the minor's property.

Articles 164 and 269 of the Civil Code and 225 of the mortgage law, heretofore quoted and often referred to, state who can consent in the name of a minor. Besides those mentioned no other person could consent to the alienation of a minor's property, whether he be called "appraiser," "guardian *ad litem*" or "co-heir," and no other person could be substituted for those mentioned except the father when the minor is under his *patria potestad,* and even in case the father consents he can only do so after an authorization by a competent court, a *hearing of the fiscal,* and the showing of "need and necessity" for the said alienation, as again appears in the case of *Monge vs. Zechini,* 17 P. R. R., *supra.*

Inasmuch as no one of those persons named by the law as necessary to complete the legal capacity of the minor to enter into a contract appeared in his behalf with judicial authorization, the act of alienation of the property lacks

utterly all of the requisites necessary to make it legal. Of course, it is clear that where there is no consent the contract does not exist; and where there is merely the appearance of a consent that consent is given under such circumstances and conditions that it is not a legal consent, and therefore there is still no contract.

To quote from Manresa:

> "Although Section 1261 of the Civil Code (1228 of the Code of Porto Rico) by its very context appears to have no other end than that of enumeration, the material of it is so fundamental, and its reasoning so energetic, that it is possible to derive from it the most important consequence that when one of the three requisites (of a contract) fails, not only is the contract annulled, but also it is susceptible of ratification, but something further results—THE CHAIN OF RIGHT UTTERLY FAILS. THERE IS NO CONTRACT, as the text says. The jurisprudence in reference to the mortgage law goes so far as to declare also that the article commented upon reaches to the extent held in the decision of November 15, 1897, that:
>
> " 'The consent of persons who ought to give it in each contract is so essential, according to what is set out in article 1261 of the Code, that when this requisite fails there is no true contract, because such failure (of consent) is incurable.' "
>
> Manresa, "Commentaries on the Civil Code," vol. 8, page 629, ed. 1907.

(*f.*) The next question is: "As to the authority of the defensor judicial?"

The position of "defensor-judicial" is analogous to that of "curador *ad litem*" of the "partidas." The present Code and the Civil Code of Spain in force in Porto Rico until 1902 did not recognize in the "defensor" any further right than that of attending to the defense in court of an infant in a case where his interests were opposed to the interests of the father or mother. Neither by the "partidas," nor by the Civil Code of Spain, nor by the present Code, has the

"defensor" ever been considered to have any other attribute than that of representing the minor in court, and only in those acts where his interests are adverse to those of his father or mother. In testamentary proceedings his only authority was that of representing the infant, or standing between the infant and the surviving father or mother, in liquidating the hereditary property or hereditary rights between the infant and the surviving mother or father.

The attributes of "defensor" are merely those of a financial intermediary and of keeping watch; he cannot carry into effect any act, or sign any contract, which does not refer exclusively to the division of the property; he cannot carry into effect any act of administration, and much less that which requires the exercise of dominion—in this respect his functions are merely passive; and such being the attributes of a "defensor," and the mother's interests being adverse, the plaintiff (defendant in error) was not represented in any legal way in the act of alienation. The "defensor" had no right to recognize debts against the estate.

"Defensor" in the War Department translation of the Civil Code is called a "pro-tutor." His attributes are defined in article 236:

> "The pro-tutor shall: (1.) supervise the inventory of the property of the minor and the constitution of the bond of the guardian when proper; (2.) Enforce the rights of the minor, in and out of court, whenever they are opposed to the interests of the guardian; (3.) Call the attention of the family council to the management of the guardian whenever he may consider it prejudicial to the person or the interests of the minor; (4.) Call a meeting of the family council for the appointment of a new guardian when the gaurdianship is vacant or has been abandoned; (5.) Discharge the other duties provided by law, * * *."

(*g*.) The question of good or bad faith (which is raised in subdivision "*g*") will apply both to the question of pro-

scription (which has alreary been discussed, and which seems to have been abandoned by the plaintiffs in error), and also to the question of the right to receive rents and profits.

Article 433 of the old Civil Code (436 of the present Code) says:

> "A *bona fide* possessor is deemed to be a person who is not aware that there exists in his title, or the manner of acquiring it, any flaw invalidating the same."
>
> "A possessor in bad faith is deemed to be any person possessing in any case contrary to the above."

It must be clear that V. Mourraille y Martineau, predecessors of plaintiff in error, had legal knowledge that the title by which they acquired the property in question was void, for the reasons that have been heretofore set forth; they took part in the deed of partition; they knew that the plaintiff (defendant in error) was a child of tender years; they knew that the legal requisites for the sale of this property were lacking; they knew that the minor was not represented by any of the persons that the law requires; they knew the sale had not been authorized by a competent court previous thereto; they knew that there had been no public auction, and no hearing of the fiscal.

From the moment they knew that the property belonged to an infant they had legal notice of what the law provides for the protection of infants; to hold otherwise would be to affirm that good faith can be based on ignorance of the law, and that would be contrary to section 2 of the Civil Code (the same in both the present and the old Code) which provides:

> "IGNORANCE OF THE LAW DOES NOT EXCUSE FROM COMPLIANCE THEREWITH."

Or, as it is better expressed in Spanish, in almost the words of the Latin axiom:

"QUE LA IGNORANCIA DE LAS LEYES NO EXCUSA DE SU CUMPLIMIENTO."

Manresa, in volume 4, at page 102, of his "Commentaries on the Civil Code of Spain," ed. 1907, commenting upon the two articles referred to together, after discussing the distinction between error of law and error of fact, says:

> "This principle requires the distinction without establishing an absolute rule, in accordance with the provisions of section 2 and giving to article 433 all possible force, IGNORANCE OF THE LAWS CANNOT SERVE AS A BASIS FOR GOOD FAITH; ERROR IN THE APPLICATION OF THEM MAY. We leave for further discussion possible error, but we never admit inexcusable ignorance.
>
> "But although ignorance of the law may be based upon an error of fact—that is to say, the ignorance of a fact in relation to the capacity to transmit and in relation to the intervention of specific persons may exist, complying with certain formalities and knowledge of certain acts, and also error of fact may exist in the interpretation of doubtful principles.
>
> "It is supposed the possessor knew that infants could not transfer, but he believed that the owner was not a minor; he knew that insane persons could not alienate, but he was ignorant of the insanity or lack of capacity of the grantor; he was not ignorant of the fact that married women need the permission of their husbands, but he was deceived as to the true status of the woman, or, in regard to the personality of the husband; he believed that a power of attorney was not revoked that had been revoked or was false; he believed that the guardian who took part in the act had been legally named; he was not aware of the clause of reversion, or of substitution, or of limitation, which actually existed, or he knew of these clauses that could be interpreted with different meanings; he believed that the third degree of relationship, to which article 811 of the Civil Code refers, could not be computed in relation to descendants of whom the ascendant inherited, etc."

"This, and no other, seems to be the extent of article 433 (436 Porto Rico) and of 1850 (1851 Porto Rico) if the sound juridical principales which make it obligatory to compliance with the laws for everybody are not to be varied because ignorance cannot serve as an excuse for anybody."

"IGNORANCE OF CIVIL RIGHTS CANNOT AVAIL THE POSSESSOR, according to the decision of the Supreme Court of Spain of October 8, 1862."

Therefore, it must be clear that ignorance of the law—ERROR DE DERECHO—is never excusable. The law establishes the presumption that every citizen knows the purposes for which the law was promulgated; that ignorance of it shall not suspend its effects, and this is because every law that is promulgated—especially if it has reference to matters of public policy—must produce its effects as much against those who are ignorant of it as to those who know it. No one can allege as a good reason for not being subject to the effects of prescription the fact that he did not know the law in regard to it; nobody can exempt himself from personal arrest, alleging that he did not know that the act he committed was an offense; no one can deny the effect of an inscription in the registry, alleging that he was ignorant of the mortgage law.

As the acts upon which this action was based had reference to the alienation of property of minors, for whom the law has established the most rigid protection and has provided for certain legal formalities which are well known to everybody, lawyer and layman alike, how can plaintiffs in error allege good faith in the acquisition of the property in dispute when it was alienated with such notorious disregard of the provisions of law, and especially in view of the provisions of section 2 of the Civil Code, already cited, and in view of the jurisprudence which relates to it, and public welfare and social order.

This matter is *stare decisis*, in view of the holding of the

Supreme Court of the United States in the case of *New Orleans vs. Gaines,* 82 U. S., 624, where the court, in interpreting article 3414 of the Civil Code of Louisiana, which is in effect the same as the sections of the Civil Code of Porto Rico already cited, said:

> "'That the city of New Orleans ought to be deemed and held, and is hereby deemed and held, to have purchased the property in question with full notice that the said sale at auction, under the pretended authority of the said Richard Relf and Beverly Chew, and the said act of sale to the said Evariste Blanc, were unauthorized, illegal, null and void, and in derogation and fraud of the rights of the person or persons entitled to the sucesión of the said Daniel Clark.' This sale to Evariste Blanc was the source from which the city derived its title to the property in question. During the whole time of its holding, the city was a possessor in bad faith of the property of the plaintiff."

And in the case of Monge *vs.* Zechini, 17 P. R. R., 730, the law of Porto Rico upon this subject is clear, for the Supreme Court of Porto Rico holds in that case, under facts which are almost identical with the facts of the case at bar, that:

> "Although in this case the parties were present and the 10 years of possession required by said section (1858 of the Civil Code) had elapsed, the requirements of good faith and just title, *necessary for the purpose,* were lacking."

Good faith, then, being lacking, both under the letter of the law as cited and in the opinion of commentators cited, and under the decisions of the Supreme Court of the United States and of Porto Rico already cited,—there can be no question but that plaintiff (defendant in error) was and is entitled to the rents and profits of that portion of the property of which the usufruct pertained to him, during the period that he was prevented from enjoying them.

Plaintiffs in error have laid stress upon sections 224 and 228 of the Civil Code of Porto Rico (being 159 and 163 of the old Code) as showing that plaintiff (defendant in error) was not entitled to the usufruct pending his majority. Section 224 merely refers to the administration of the property of children under *patria potestad,* and says it shall belong to the father and mother jointly. There is nothing in that section which says that the usufruct does not belong to the children; it merely says that the parents shall administer it.

In the case at bar the full dominion (which, of course, includes the usufruct) was granted to the plaintiff (defendant in error; the *nuda propiedad* of one-third was given to him—that is, the fee—while the usufruct of this one-third went to the mother. This was attended to by the instructions of the court to the jury, and what the jury allowed was the usufruct of two-thirds of the estate only, which belonged to the plaintiff, but was under the administration of the surviving parent. She was under the same restraint and obligations in accounting for and administering this usufruct as she was in administering the dominion of the property; she could not alienate nor dispose of it; she could use it for the support and education of her children, provided:

(1.) He was under her *patria potestad.*
(2.) Until the time he was emancipated.
(3.) He did not live separate from the mother.
(4.) She had complied with what is provided in article 228 of the Civil Code,

which provides that:

"The parents, as regards the property of a child in which they possess the usufruct or administration, have the same obligations as any other usufructuary or administrator as well as the special obligations established in section 12, title V, of the mortgage law."

"An inventory shall be made with the intervention

of the public attorney of property of children of which the parents have only the administration; and, on petition of said public attorney, the District Court may declare that the securities belonging to the child may be placed in deposit."

As the property in which he was entitled to the usufruct had been alienated by the act of the mother, of course she performed none of the acts required of her by law: no accounting for the rents and profits was ever made to the plaintiff, either by her or by the pretended grantees; furthermore, she would have been bound by the same restrictions of law in alienating the usufruct as she was in alienating the fee.

To quote from volume 2, page 291, of the Work of Martinez Ruiz on the Civil Code, interpreted by the Supreme Court of Spain, commenting upon article 160:

"From what has been said it appears that the right of the usufruct, although granted for the benefit of the parents, is liable, according to what has been indicated, to provide for the personal needs of the son and to cover the cost of his food and education, according to article 155 of the Code, the usufruct being, therefore, a right, and at the same time the fulfillment of a duty, up to the point, as can be seen in the question and the decisions which will be inserted hereafter, the duty is placed before the right and is of such a kind that, in the concurrence of the son with the creditors of the father the son has preference over the creditors in the said usufruct, it not being attachable nor responsible to obligations of third persons, but only in such part as appears unnecessary in attending to the needs of the child.

Decision of the Supreme Court of Spain of July 7, 1892.

Decision of the Supreme Court of Spain of Sept. 27, 1893.

Article 108 of the Mortgage Law, section 7, provides:

> "The following are not mortgageable:
> "* * *
> (7) The right of use which the law allows fathers and mothers in the property of children and the surviving spouse in the property of the deceased."

Therefore, it must be clear that the right of the usufruct was not only inalienable, but not mortgageable, and the defendants (plaintiffs in error) having had the enjoyment of it, must return it to the legal owner.

How shall this usufruct be estimated under the law of Porto Rico?

Section 457 of the present Code (455 of the old Code) says:

> "A possessor in bad faith shall pay for the fruits collected and for those which the lawful possessor might have collected, and shall only have the right to be reimbursed for the necessary expenses incurred in the preservation of the thirg." * * *

As no counter-claim was filed for necessary expenses incurred in preservation of the thing, we need only consider "the fruits collected and those which the lawful owner might have collected." It is clear that under this section the admission of evidence objected to by the defendants was entirely proper, and that the instructions of the court to the jury were proper. It must be clear that the only way of arriving at an estimate of what the lawful possessor might have collected was by the admission of just such evidence as was admitted.

Furthermore, section 361 (present Civil Code) states that:

> "To the owner belongs:
>
> "(1) The natural fruits.
> "(2) The cultivated fruits.
> "(3) The civil fruits."

"SECTION 362. Natural fruits are the spontaneous products of the soil and the broods and other products of animals.

"Cultivated fruits are those produced by lands of any kind through cultivation or labor.

"Civil fruits are the rents of buildings, the price paid for the lease of lands, and the amount of perpetual life or other similar incomes."

Commenting upon these sections, *Manresa*, volume 4, page 259, says:

"Those (fruits) which he might have collected are those which the property should have produced."

"According to Goyena, in commenting on article 431 of the proposed Code of 1851, he includes in these words not only the fruits which the proprietor or possessor of better right might have been able to make the property yield, but also those which the defeated possessor might have made use of, although the owner himself would not have been able to have gathered them."

"Article 455 of the present Code does not go so far: it only speaks of the fruits which the legitimate possessor—that is, the possessor of better right—winning his suit, might have been able to have collected if he had been in possession of the property. It is to be noted that said article speaks of fruits which should have been obtained and not of fruits which were obtained, which might be the same, but there attaches such a generality to the principle, making it applicable the same to natural fruits as to civil fruits, rents, pensions, interest, which, on account of the negligence of the possessor cannot now be recovered, are undoubtedly fruits that could have been obtained; fruits lost through the fault of the same before having obtained them are also fruits which could have been obtained; it would be the same if he sowed 10 when he should have sowed 20; if he obtained 15 when 30 was an average product of the crop in a given year, etc. In order that they may be called fruits that should have been obtained there must appear fault, abandonment or negligence in the possessor."

In other words, plaintiff had the right not only to what the lands actually yielded, but also to what they might have yielded with the care and attention that "a good father of a family" would have exercised.

The Supreme Court of the United States, in construing the civil law on this point, says:

> "By the Civil Law the exemption of the occupant from an accounting for rents and profits is strictly confined to the case of a *bonæ fidei* possessor, WHO NOT ONLY SUPPOSES HIMSELF TO BE THE TRUE OWNER OF THE LAND, BUT WHO IS IGNORANT THAT HIS TITLE IS CONTESTED BY SOME OTHER PERSON CLAIMING A BETTER RIGHT."
>
> Green *vs.* Biddle, 8 Wheat. (U. S.), 1.

The usufruct of the son's property would belong to the mother only as trustee of her son, for his support and education. It would not belong to the defendants (plaintiffs in error). The mother would have to show that her son lived with her and that she supported him, thus returning the usufruct to him to whom it belonged, and, furthermore, she would have to render an accounting. It may be that if she can prove all of this she would have an action against her son in case he recovers from the defendants, but the legal title to the usufruct was and is vested in the son, and he was and is entitled to it from the moment of ouster; her personal usufruct of one-third of the property has been taken care of by the court's instructions to the jury and she is estopped as against the defendants (plaintiffs in error) by her participation in the sale to them of the property in payment of an alleged debt. The entire fee, however, vested in the son.

Answering Points in Brief of Plaintiffs in Error.

We think that practically all of the points made by plaintiffs in error have been already answered and shown to be erroneous in the preceding pages, but we desire to allude to them again briefly in conclusion.

Point 1. The demurrer to the answer and amended answer raised practically all of the points of law upon which this case depends. The denials contained in paragraphs I, III, IV, V, VI, VII, VIII, IX, XI, and XII, are all explained in their affirmative defenses, and it must be clear from a reading of the law that these affirmative defenses are not sufficient.

The allegation of paragraph XI of the complaint was necessary only as to the question of jurisdiction, and the allegations of paragraph XII were taken care of by the jury. In any event, the sustaining of the demurrer to the amended answer gave defendants (plaintiffs in error) an opportunity to amend and establish a counter-claim, which also was taken care of by the court.

Subhead b of Point 1 of the brief of plaintiffs in error has already been discussed. We desire only to add what seems to be conclusive—a quotation from *Nieves vs. Sanchez*, 17 P. R. R., 844, where Mr. Justice del Toro, concurring, says:

> "The action instituted by the plaintiff is of ejectment and is independent of an action for annulment of defendant's title."

And he quotes from the Supreme Court of Spain, as follows:

> " 'The legal doctrine that it is necessary first to request the annulment of title when an action of ejectment is instituted against persons who possess the object of the same by virtue of title had as lawful is only applicable when the annulment causes the action, but not when the right to recover is independent thereof' (judgment of the Supreme Court of Spain, October 13, 1873)."
>
> Decision, Supreme Court of Spain, Jan. 17, 1889.
>
> Decision, Supreme Court of Spain, Apr. 6, 1889.
>
> Decision, Supreme Court of Spain, Feb. 13, 1892.

The same conclusion is reached in *People vs. Dimas,* 18 P. R. R., page 1019, where the court holds, quoting from the syllabus:

> "* * * it is necessary that the annulment of said title be first sought is applicable *only* when the action arises from such nullity, but not when the action to recover is independent thereof."

Plaintiffs in error have quoted from this same case, apparently not understanding its meaning.

In regard to *point 2* in the brief of plaintiffs in error, there can be no doubt if from an examination of the law which this case presented the court decided that the legal defenses made by the defendants were insufficient (and there were no other defenses made), a direction of the verdict was not only proper, but the duty of the trial court.

At folio 32 of the typewritten brief of plaintiffs in error they clearly overlooked the distinction between the use, right of usufruct, and possession.

As to *point 3* in the brief of plaintiffs in error, we think the question of good faith has been sufficiently discussed.

We have already discussed the question of how to estimate rents and profits as discussed in point 4 of the brief of plaintiffs in error, and it must be clear that the only satisfactory way of arriving at what the property could have produced if cultivated with the care and diligence of "a good father of a family" was by means of the kind of evidence that was introduced. While it may have been speculative to a certain extent, all evidence as to what a rural property, a farm, will produce, or should produce, must be speculative, and the evidence of land-owners and agricultural experts of the community is the best evidence obtainable in matters of this kind.

Point 5 of the brief of plaintiffs in error has been fully discussed. All of the articles from the codes cited by plaintiffs in error in their brief on pages 20-23 are inapplicable to this case, because they refer to partition and vision ***between heirs.***

It may be, as in all cases, some minor errors have been committed by the trial court, but we believe that no error affecting the substantial rights of the parties has been committed, and that the plaintiff (defendant in error) is entitled to a decision from the Supreme Court of the United States sustaining in its entirety the judgment of the lower court.

San Juan, Porto Rico, February 19, 1915.

Respectfully submitted.

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Copy received this 19th day of Feb., 1915.

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JOSÉ R. H. SAVAGE,
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[Endorsed:] Supreme Court of the United States. No. 51. Nancy Nerón Longpré, Gustavo Mourraille *et al.*, plaintiffs in error, vs. Clemente Diaz y Quiñones, defendant in error. Brief in behalf of defendant in error.

LONGPRÉ *v.* DIAZ.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

No. 51. Submitted March 15, 1915.—Decided June 1, 1915.

Under the law of Porto Rico as it was in 1892 a widow and guardian *ad litem* had no authority to give the property of the minor child in payment of a debt of the deceased father in private sale, and there was no authority in any judge to approve such a voluntary partition as was involved in this action.

A disposition of a minor's property by private sale in Porto Rico, unauthorized by the local law, even if approved by a judge, is void, and the minor, on coming of age, may sue in ejectment under the provisions of the Civil Code of Porto Rico, then in force and applicable in this case, without first seeking rescission of the partition.

An unsuccessful defendant in ejectment must, unless a purchaser in good faith, account for the fruits gathered during possession.

While under the Civil Code of Porto Rico good faith is presumed until bad faith is shown, one who purchases property belonging to a minor under a confessedly non-existent and void instrument cannot be a purchaser in good faith.

The rule that the burden of proof to show bad faith is on him who charges it, does not apply where bad faith is shown *ipso facto* by the acquisition being contrary to law.

Under Art. 442, of the Civil Code of Porto Rico, an heir who possessed

property in personal good faith is relieved from liability to account after ejectment, for the fruits during his possession, notwithstanding his ancestor from whom he derived the property may not have acquired it in good faith.

THE facts, which involve the construction and application of the laws of Porto Rico relating to the accountability for fruits and profits of real estate of one evicted therefrom, are stated in the opinion.

Mr. H. H. Scoville and *Mr. Jose R. F. Savage* for plaintiff in error.

Mr. Francis H. Dexter, Mr. Joseph Anderson, Jr., and *Mr. Damian Monserrat, Jr.*, for defendant in error.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

Clemente Diaz y Gonzalez, residing in Viequez, Porto Rico, there died in April, 1890, leaving a widow and an infant son, the issue of their marriage. The deceased was the recorded owner of a piece of farming property known as Destino, as well as of other pieces of property of small area and value, all of which were his separate estate, having been acquired before marriage. By the provisions of the Code it is conceded that the minor was the sole legal heir of his father, taking all his property, subject however to a usufruct of one-third in favor of his mother, the widow. In April, 1892, in conciliatory proceedings before a municipal magistrate preparatory to a suit to be brought by Ramon Aboy Benitez to enforce a debt which he asserted against the estate, the widow admitted that Aboy was a creditor of the estate for a little over three thousand pesos, evidenced as to a considerable part by the notes of the deceased and the remainder embracing doctors' bills, taxes and money advanced for the support of the widow and infant child. The creditor,

presumably in consequence of this acknowledgment, agreed to await payment until March, 1893, when a lease would expire which existed on the property known as Destino in favor of an agricultural partnership styled Mourraille & Martineau. In the following August, 1892, on the petition of the widow the court of first instance of Humacao, within whose territorial jurisdiction Vieques was situated, recognized the minor as the sole heir of the father and as such entitled to his estate subject to the usufruct in favor of the widow as above stated. The court subsequently on the petition of the mother appointed a paternal uncle of the minor, Santos Diaz y Gonzalez, his guardian *ad litem* to act for and represent the infant in matters where from conflict of interest or otherwise his mother would be incapacitated from so doing. Thereafter Aboy by a notarial act transferred to the firm of Mourraille & Martineau the greater part of his acknowledged debt, the widow intervening in the act for the purpose of taking cognizance of the transfer and in addition to recognize certain small debts held by the firm against the estate.

Contemplating an extra-judicial partition, the widow and the guardian *ad litem* then united in the appointment of an accountant to accomplish that purpose, who drew an agreement of so-called partition which was executed by the parties on December 27, 1893. In the agreement the liabilities of the estate were enumerated and its assets were stated and valued and the property of the entire estate was conveyed. For the purposes of this case it suffices to say that as the debt due to the firm of Mourraille & Martineau was as stated precisely equal to the value affixed to the farm Destino, that property was transferred and delivered to the firm in extinguishment of its debts and a like course by transferring other property was pursued as to the comparatively small debt of Aboy. The small remainder of the estate was declared to be subject to the ownership of the minor and the one-third usufruct

of his mother. To make this private agreement for voluntary and extra-judicial partition authentic in form by placing it of record, the widow, on February 1, 1894, appeared before a notary and exhibiting the agreement deposited it among the archives of his office after making the necessary declarations to accomplish that purpose. This being done, a copy of the agreement as authenticated and deposited was presented to the judge of the court of first instance of Humacao for his approval, which was by him given with a direction to the officer of registration to place the agreement as authenticated upon the public records. In April, 1894, this was done, thus transferring on the public record the title of the farm Destino from the name of Diaz, the deceased, to the name of the firm of Mourraille & Martineau. It is conceded, however, that in the meanwhile, in February, 1894, as a result of the transfer made under the so-called partition agreement delivery of the possession of the farm Destino was made to the firm and they held the same asserting ownership thereof.

By the provisions of a notarial act executed in May, 1894, which was inscribed upon the public registry, for the purpose of dividing the assets of the firm of Mourraille & Martineau among the partners, the title to the farm Destino passed from the firm to the individual name of Victor Mourraille. By his death which, although the date is somewhat obscure in the record, occurred probably in January, 1895, the property passed to the plaintiffs in error, his widow and heirs. Whether they took as the result of intestacy or by will is not disclosed and is immaterial to consider, since it is conceded that the rights enjoyed by them were but a continuation of those possessed by Mourraille himself in virtue of the proceedings conveying the property Destino to the firm and of the attribution of the property to Mourraille in the division of the firm assets.

More than twenty years after the death of his father the minor, Clemente Diaz, having been duly emancipated, commenced in a local court in Porto Rico this suit against the present plaintiffs in error, the widow and heirs of Mourraille, in revendication of the property called Destino previously transferred to them under the circumstances above stated. They removed the case to the court below and successfully resisted a motion to remand. Thereupon the petition was amended. As amended in substance it asserted that the plaintiff was the duly registered owner of the property, and that his possession had been wrongfully disturbed in 1894 by the action of the defendants or their author in taking possession of the same. A brief outline of the facts which we have previously stated was made and the prayer was for a recovery of the farm called Destino and for a decree for fruits and revenues from the time of taking possession in 1894. An answer was filed which was demurred to for insufficiency. It would seem that before the demurrer was passed upon an amended and fuller answer was filed. By this answer the facts which we have previously stated were in substance admitted. The capacity of the plaintiff to sue was challenged, first, because as an heir of his father he had no right to do so, and second, because he was without authority to recover the property without previously suing to rescind the partition proceedings and the recorded title resulting therefrom and thus collaterally assail those proceedings. The want of right to recover as a question of merits was denied, first, because of a term of prescription which was pleaded, second, because of the validity of the partition proceedings and the conclusive effect of the judgment of approval given to them by the proper court, third, because a suit to rescind such proceedings was barred by a prescription which was also pleaded, fourth, because in any event the plaintiff was without authority to sue to recover the fruits and revenues of the property because

during his minority they were collectible, if due, by his mother as administrator of his estate and because even in case there was a right to evict, the fruits and revenues could not be recovered from Mourraille because of his good faith, nor from the defendants holding under him because of their good faith. This answer was again demurred to as stating no defense. The court sustained the demurrer in so far as it questioned the sufficiency of the technical defenses advanced by the answer on the ground that the proceedings of so-called partition were absolutely void and the approval affixed by the judge of the court of first instance of Humacao was equally null because of an absolute want of jurisdiction on his part to take the action in the premises which he had taken. The answer was again amended. The defenses to the merits concerning the want of right to recover the property or its fruits and revenues as well as prescription were all in the fullest way reasserted, and in addition a counterclaim was presented asserting that the defendants in the event of eviction were entitled to recover the amount of the debt owned by Mourraille & Martineau which had been used in the so-called partition proceedings to pay for the Destino property, with interest thereon at six per cent.

Upon the issues which were made by this answer and counterclaim the case came finally to trial before a jury. On the opening the plaintiff to make out his title after establishing his heirship, offered the documents establishing the facts concerning the partition which we have stated and the defendants expressing their purpose to offer no further evidence on those subjects, the court applying the conclusion which it had reached on the demurrer as to the absolute nullity of the partition sale, instructed the jury that on the question of title there must be a verdict for the plaintiff. Thereupon the trial proceeded solely as to the right to recover fruits and revenues and no evidence on any other subject was offered. It was

agreed between the parties that there should be deducted from any sum of fruits and revenues found to be due one-third thereof upon the theory that they belonged to the widow of Diaz, the mother of the plaintiff, in virtue of her usufruct and were not involved in the suit. And it was further admitted that the claim asserted in the counter-claim was valid and there should be a verdict for the recovery of the sum claimed with interest. Considerable evidence as to fruits and revenues was offered and some exceptions were taken by the defendants to rulings of the court admitting evidence concerning the subject on the ground that by its admission too great leeway was afforded for speculative damages. The defendants specifically requested that the jury be instructed that if they were in good faith they were not liable for fruits and revenues, which was refused and an exception taken. And an exception was also reserved concerning the right to award fruits and revenues to the plaintiff for the period covered by his minority because of the right of his mother to administer his property during such time. There was a verdict and judgment for the property and for the rents and revenues during the entire term of adverse possession, whether held by Mourraille & Martineau, by Mourraille himself, or by the defendants holding under him.

There are twenty-seven assignments of error, but we shall confine our attention to the questions pressed in argument. The validity and effect of the so-called partition proceedings on the title of the property sued for underlies every consideration urged and we therefore, as did the court below, first consider that subject. While it is obvious that the property left by the deceased and which passed to his heir, the minor, was bound for the debts of the deceased and subject to be disposed of under lawful proceedings to pay the same, we think it is indisputably apparent that there was an absolute want of authority on the part of the widow and guardian *ad litem* to give the property of the

minor in payment of an alleged debt of the estate of the father. We say this because the so-called partition and the sale of the property by a mere private agreement were directly in the teeth of the requirements of the law concerning the administration and sale of a minor's property and therefore such mere private sale created no rights whatever conflicting with the title vested in the minor in virtue of his heirship. And we are of opinion moreover that by the same token it conclusively results that the judge of the court of first instance of Humacao was absolutely without jurisdiction to approve the so-called voluntary partition proceedings and therefore that no rights whatever arose from such sanction. We do not stop to refer to the requirements of the local law which were absolutely disregarded in the private sale relied upon, since in substance it is not disputed that if the proceedings by which the property was sold had the character which we affix to them, they were wholly unauthorized by the local law and indeed were prohibited by its express or implied provisions. In the light of this conclusion we are of opinion that the lower court committed no error in overruling the challenge made by the answer to the capacity of the plaintiff to sue in revendication (ejectment) upon the assumption that he was bound first to seek the rescission of the partition proceedings and to obtain an annulment of the order of the judge approving the same, since it is impossible to conceive that the preliminary duty existed to obtain the annulment of that which was already null or to seek to rescind that which never in contemplation of law had any existence whatever. In passing we observe that the contention that the plaintiff as the sole heir of his father's estate and as such the owner of the entire property sued for was without capacity to sue is, we think, refuted by its mere statement.

Aside from the objections to which we have referred concerning the admissibility of evidence as to the quantum

of fruits and revenues which we shall hereafter notice, this reduces the case to a consideration of the right to recover fruits and revenues. The question arises in a two-fold aspect: First, as to the liability for fruits and revenues of Victor Mourraille, the author in title of the defendants, and second, of the defendants themselves. In both, questions of fact and law require to be considered, the first involving the existence of good faith, and the second, the legal responsibility for fruits and revenues resulting from the ultimate conclusion as to the existence of good faith drawn from the proof on the subject.

The provisions of the present Porto Rican Civil Code controlling the subject, which are in substance the same as those of the Spanish Civil Code previously governing in Porto Rico, are as follows, the numbers of the articles of the former Spanish Code being printed in brackets:

"SEC. 453. [451] A possessor in good faith becomes the owner of the fruits collected, so long as the possession is not legally interrupted.

"Natural and cultivated fruits are considered as collected from the time they are gathered or separated.

"Civil fruits are considered as daily proceeds, and belong, in that proportion, to the possessor in good faith.

"SEC. 436. [433] A *bona fide* possessor is deemed to be the person who is not aware that there exists in his title or in the manner of acquiring it, any flaw invalidating the same.

"A possessor in bad faith is deemed to be any person possessing in any case contrary to the above.

"SEC. 437. [434] Good faith is always presumed, and any person averring bad faith on the part of a possessor, is bound to prove the same.

"SEC. 444. [442] Any person who succeeds by hereditary title shall not suffer the consequences of a faulty possession of the testator, unless it be shown that he was aware of the defects affecting such possession; but the

effects of possession in good faith shall benefit him only from the date of the decease of the testator."

First, As to the good faith of Mourraille.

As there was no evidence from which the want of good faith of the firm of Mourraille & Martineau or of Mourraille himself was deducible except the proof concerning the giving in payment of the minor's property as the result of the voluntary partition, it follows that unless such evidence established the want of good faith there was error under the very terms of the Code in allowing the recovery of fruits and revenues against Mourraille for the period of his possession as distinguished from the possession of the defendants holding under him. As we have already, however, pointed out that the partition proceedings were absolutely void because in violation of the requirements of law concerning the sale of the minor's property, it follows that the absence of good faith clearly resulted from taking possession of the property and attempting to hold it under a confessedly nonexistent and void instrument. The conclusion so irresistibly arises from the premise upon which it is based that reference to authority on the subject might well be dispensed with. Authority, however, is not wanting, since in countries where the civil law prevails and the right to retain fruits and revenues in the event of eviction in case of good faith is recognized, with substantial unanimity it has always been considered that the existence of good faith was excluded and the conclusion of legal bad faith necessarily arose against one who was a party to an attempt to acquire property by a deed, conveyance or proceeding which was absolutely void because in violation of prohibitory laws. Such was the rule in France prior to the Code Napoleon. So also under that Code the doctrine has been expressly announced and applied by the Court of Cassation. See Hérit. Daudé C. Etienne, Cass. 19 Dec. 1864, Journal Du Palais for 1865, p. 27, and note 3 where a reference is made to other ad-

judged cases on the subject and to doctrinal writers sustaining the principle. So in Louisiana many years ago it was recognized that "The purchaser of minors' property by private agreement is a possessor in bad faith." *Fletcher* v. *Cavalier*, 4 Louisiana, 267, 277; *Morand* v. *New Orleans*, 5 Louisiana, 226, 242. And the same principle was applied to "one possessing by a judgment of a court without jurisdiction." *Lowry* v. *Erwin*, 6 Rob. 192. And that such was the law in Spain both before and after the Civil Code would seem to be undoubted since Scaevola so treats it. Thus that author in his Commentaries on the Spanish Civil Code, Volume 8, pages 308 *et seq.*, in commenting on Article 442 (identical with § 444 of the Porto Rican Civil Code,) says:

"This rule, which is but an expression of the principle that 'the burden of proof is upon the one who makes the charge,' . . . in our opinion had no application in the event the possession takes its origin in a faulty manner of acquiring, either by being contrary to provisions of law, or through lack of compliance with certain requisites. In this case, we said, that proof was not necessary, inasmuch as bad faith was shown *ipso facto* by the single circumstance of the acquisition being contrary to law. 'Thus,' we said, 'he who acquires a thing belonging to a minor, without authorization from the family council, he who purchases it, regardless of the prohibitions of Article 1459, cannot be considered a possessor in good faith, because he knew beforehand that he could not acquire it, that the acquisition was faulty, being contrary to law, and because no one is permitted to plead ignorance of the law.'"

And this brings us to consider under a second heading whether the burden of proof was sustained and the want of good faith of the plaintiffs in error, the heirs of Mourraille holding under him, was established as the result of the proof of Mourraille's own bad faith.

Second, As to the good faith of the heirs of Mourraille.

The contention of the plaintiffs in error pressed below and here urged is that even conceding the absence of good faith of Mourraille and their liability as his successors or heirs as the result of the eviction to refund fruits and revenues during his term of possession, the liability of the defendants beyond this to pay rents and revenues did not arise because the proof of the want of good faith in Mourraille did not establish the want of good faith of his heirs holding under him. And because of this proposition it is insisted the court below erred in refusing to charge that in the absence of proof of bad faith on their part they were not liable on eviction for fruits and revenues during their possession as distinguished from that of Mourraille. The contention is rested upon the provisions of § 444 of the Porto Rican Code (Article 442 of the Spanish Code), saying:

"Any person who succeeds by hereditary title shall not suffer the consequences of a faulty possession of the testator, unless it be shown that he was aware of the defects affecting such possession; but the effects of possession in good faith shall benefit him only from the date of the decease of the testator."

This provision, it is insisted, causes the liability of the heirs to pay fruits and revenues upon their eviction to depend upon their personal good faith disconnected from and uninfluenced by the bad faith found to exist in Mourraille, their author, under whom they held. On the other hand this is met by the contention that by the very nature of the possession of the heirs under and through Mourraille as his legal successors continuing, so to speak, his personality, the bad faith of their author was imputable to them and their liability as possessors in bad faith to restore fruits and revenues is consequently established. It is conceded by both parties that the text of the section relied upon was introduced into the Spanish Code as the

result of an original conception, since it was not found in the Code Napoleon and not expressed in the codes which have followed that Code, as for instance the Code of Louisiana. It is also to be conceded that as the text in the Spanish code had received no authoritative interpretation when it was adopted in so many words into the Porto Rican code, therefore the adoption carried with it no previous authoritative interpretation. The respective contentions turn upon a discussion of the text relied upon and the support which each side assumes is afforded their view of the subject derived from Spanish doctrinal writers on the Code. Thus in favor of the doctrine that the heirship to the property carries with it as an inseparable incident the heirship to the bad faith of the author or ancestor, especially where such bad faith of the author is the resultant of the void nature of the immediate title under which he held the property, great reliance is placed upon a passage in the work of Scaevola, the eminent legal writer already referred to. The passage in question is found in the comment of the author upon Article 442 of the Code immediately following the passage which we have already quoted concerning the proof of bad faith established as against one who has acquired through an absolutely void deed or proceeding, and is as follows:

"Now then: will the explanation be applicable to the successor? Our opinion inclines to the affirmative. The case presented by us deals with an error of law, and this no one should be ignorant of. The successor cannot maintain that he is ignorant of it: *first*, because it is not possible to claim ignorance of the law; *second*, because on accepting the inheritance, from the moment a person is converted into a successor, there is no other presumption but that he has examined the titles of possession of his author and predecessor. Acceptance of the inheritance implies previous examination of everything concerning it. How can it be lawful for a successor to allege that he believed, for

example, that an estate possessed by his predecessor was held in good faith if he had acquired it in a faulty manner, contrary to law? Such allegation would be inadmissible, because the successor, by the mere fact of being such successor, is presumed to know the titles of possession of the predecessor, and therefore the faults attached thereto. On the supposition of which we are speaking, we repeat, bad faith is inherent to transmittal to the successor, inasmuch as the successor continues the personality of the predecessor."

On the other hand reliance to the contrary is placed upon opinions expressed by other Spanish doctrinal writers on the Code or books dealing with that subject as follows: Manresa, Commentaries on the Spanish Civil Code, Vol. 4, p. 165 *et seq.;* Spanish Judicial Encyclopedia, Francisco Seix, Editor, Vol. 4, p. 665 *et seq.;* Diaz Guijarro y Martinez Ruiz on the Civil Code, Vol. 3, p. 311. Without admitting that the authorities thus relied upon are entirely reconcilable one with the other or afford what is deemed any safe rule for elucidating the significance of the section of the Code in question, we are of opinion that it must be conceded that these authorities do not coincide with the significance attributed to the article of the Code under consideration stated by Scaevola in the passage just quoted. Because of this situation we do not particularly refer to the authorities last relied upon since at best we can find nothing in them to relieve us of the duty of interpreting the section in question or which renders the performance of the duty of interpretation less difficult. In view of this situation we come to consider the subject with which the article deals primarily from the point of view of historical evolution in order if possible to throw light on the doctrinal conditions which led to the incorporation of the article into the Spanish Code and thus ascertain the intent and purpose which controlled its enactment

and then to interpret the provision from that vantage point.

Speaking in a general sense, before the Code Napoleon, certainly in the provinces more largely influenced by the Roman law, the doctrine of the right of a possessor in good faith to retain the fruits and revenues in case of eviction was firmly established. It was also equally clearly recognized that the bad faith of the author was attributable to one holding under him as an heir or universal successor. If complexities obtained in the application of the doctrine, they in a large measure resulted from questions concerning the burden of proof as to good or bad faith. Pothier De la Propriété, n. 332 et 336; Domat Lois civ., 1re part., liv. 3, tit. 5, n. 14. And see also a statement of Laurent on the subject, t. 6, n. 221. The general doctrine as to non-liability for fruits and revenues on eviction in case of good faith was embodied in the Code Napoleon in Articles 549 and 550. Two things came at an early day to be recognized under that Code: First, that it had come to pass that so far as the restitution of fruits and revenues was concerned, the burden of proof to establish the absence of good faith on the part of a possessor whose eviction was sought was upon the one seeking the eviction. The doctrine as it came to be crystallized is thus stated by Laurent, t. 6, n. 225, p. 298: "According to the principles generally prevailing the burden of proof would rest upon the possessor of property to prove his good faith. In effect under general principles the owner seeking to recover property would only be obliged to prove his right of property and when that right was established, by that fact alone the fruits of the property would belong to him as the result of the general rule established by Article 547. The possessor who claimed the fruits would then become an actor on his own account and if the correct principles were rigorously applied, he would be obliged to prove

the foundation of his demand, that is to say, his good faith. However, it is established that the possessor under these circumstances is not obliged to prove his good faith because by the text of Article 2268 good faith is always presumed and the burden is cast upon him who alleges bad faith to prove it."

Second. So also in some measure, it may be, because of this view concerning the burden of proof and from many other considerations, the preponderant opinion sustained by judicial decisions and supported by doctrinal authority came to be that under the Code the question of good faith was a personal one, depending so much upon considerations of that character that the good faith of the possession of the author was one thing, and the good faith of those holding under him, whether heir or other successor, was another. From this it came to be acknowledged that the right to retain fruits and revenues in case of eviction might exist in favor of an heir who was in good faith from the time of his possession, although it was conclusively established that the author or ancestor was in bad faith and the duty on the heir would exist to return so much of the fruits and revenues as accrued during the possession of the author. The principle was upheld by the Court of Cassation in Parent de Chassey C. La Commune de Monceaux-le-Comte, May, 1848, Journal Du Palais for 1849, Vol. I, p. 12. The doctrine was thus succinctly stated in one of the syllabi: "The heir of a possessor in bad faith may successfully avoid the restitution of the fruits in favor of the true proprietor by setting up his own personal good faith." See also a note to the case in which many authorities supporting the doctrine are collected. Demolombe (Vol. IX, n. 613, p. 558) thus states the strongly dominant opinion on the subject: "We ask simply if the fruits which the heir himself may have collected during his possession belong to him in virtue of his personal good faith. The affirma-

tive seems today to have triumphed both in jurisprudence and in doctrine where it counts among its supporters many authorities of the most imposing character." Among those cited are Marcadé, t. II, Art. 550, n. 2; Toulier, t. II, p. 263; Demante, t. II, n. 385 *bis*. VIII; and also a list of cases adjudged in numerous intermediary courts and courts of original jurisdiction.

The doctrinal writers in pointing out the personal character of the question of good faith for the purpose of ascertaining the duty to return fruits and revenues frequently directed attention to the fact that it was easy to conceive of a case where there might be bad faith on the part of one possessing in virtue of his heirship and good faith on the part of the author and *vice versa*. The argument that to distinguish because of personal good faith between an heir and his author who had been in bad faith would be purely academic, since the heir in virtue of his liability as heir for the obligation of his ancestor would be obliged to respond for all the fruits and revenues as heir if not as possessor, was met by pointing out that the effect of considering the question as one of personal liability, while it did not break the continuity of heirship, was to sever the continuity of possession and responsibility therefor and consequently to cause it to result that while the heir as heir would be responsible for the bad faith of the ancestor during his, the ancestor's, term of possession, he would not be responsible as heir for the term in which he, the heir, had possessed the property in good faith.

It is true, as pointed out by Demolombe, following the passage previously quoted, that the doctrine of the personal character of the good or bad faith so far as the obligation to restore fruits and revenues in case of eviction was concerned, was not universally accepted. It is true also that such doctrine has not been applied under all the codes which literally followed the Code Napoleon. Thus in

Louisiana, where in substance the provisions of the Code Napoleon were incorporated in the Civil Code in Articles 3450, 3451, 3452 and 3453, the rule recognized in the law of France before the Code Napoleon has been applied in many decisions. But this subject need not be entered into, since our purpose is not to discuss the relative merits of the doctrine prevailing in France under the Code Napoleon as compared with the contrary view, but only to make clear the fact of the prevalence of the doctrine in France under the Code as a means of elucidating the interpretation of the provisions of the Spanish Code not only so far as they adopt the Code Napoleon, but as they added new provisions on the subject in question.

Coming to so do and looking in a general way at the text of Article 442 and of the cognate articles immediately associated with it in the Spanish Code, we are of the opinion that Article 442 and those dealing with the same subject were adopted for the express purpose of causing the law under that Code to conform to the principle of the personal character of the question of good faith so far as the return of fruits and revenues was concerned in case of eviction, and thus enable an heir who possessed in personal good faith to relieve himself from liability despite the personal bad faith of his ancestor or author. In other words we think that the new provisions were inserted in order to adopt in the Spanish Code the dominant interpretation prevailing in France under the Code Napoleon and to exclude the possibility of taking a contrary view. The conviction in this regard which results from the general considerations of the text of the articles in the light of the statements made becomes irresistibly certain if the articles and their relation to each other are closely examined. Thus it is to be observed that while in France the duty to show the absence of good faith, which was one of the generating causes from which the doctrine of the personal character of the responsibility was deduced, was

expressed in a general provision of the Code Napoleon not associated with the question of responsibility to return fruits and revenues, in this instance that provision was grouped in direct and immediate association with the article under consideration as if to remove all possible question of its application to the subject. Moreover, the careful manner in which the article expresses the distinction between the liability of the heir as heir to return fruits and revenues during the possession by the ancestor in bad faith and the want of liability to return such revenues during the period of possession by the heir in good faith serves palpably to emphasize the dissociation between the continuity of heirship and the break in the continuity of possession for the purpose of the return of fruits and revenues lying at the basis of the doctrine of the personal character of the question of good faith which came to be established under the Code Napoleon.

And this view of the meaning of the text and of its purpose and intent makes clear that it would be impossible to adopt the interpretation stated in the Commentaries of Scaevola to which we have previously referred. We say this because that interpretation rests upon the existence of an assumed presumption of an examination by an heir of the title deeds of his ancestor or author which cannot be indulged in without disregarding the rule as to burden of proof which Article 434 (§ 437 of the Porto Rican Code) directly ordains. Besides when it is considered that the interpretation referred to makes the heir in good faith liable to return fruits and revenues because of the bad faith of the ancestor only in cases where an assumed presumption of an examination of the title papers of an ancestor by an heir would apply, it would follow not only that the burden of proof fixed by the statute would be disregarded, but that the interpretation relied upon would be inapplicable where the bad faith of the ancestor arose from conditions dehors his title papers and which

were not susceptible of being disclosed by an examination.

As under the provisions of § 444 of the Porto Rican Code when rightly interpreted, in the absence of proof of the bad faith of the defendants they were not liable for the return of the fruits and revenues during the period of their possession even although the bad faith of Mourraille, their author, had been established during the period of his possession, it follows that there was error in the refusal of the court below to so instruct the jury and hence a reversal must result and a new trial follow. Before, however, so directing, we observe that we are of opinion that the contention concerning the want of right of the plaintiff to recover rents and revenues of the property sued for for the period of his minority because of the administrative authority vested by law in his mother, under the circumstances here disclosed was without merit, and that such also is the case concerning the objection made to the admissibility of testimony concerning the quantum of fruits and revenues because of its speculative character. The judgment therefore will be reversed and the case remanded for further proceedings in conformity with this opinion.

Reversed.